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February 11, 2022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

GARFIELD ANTHONY WILLIAMS,

Plaintiff,

- against - Index No. 1:20-cv-5995

CITY OF NEW YORK, POLICE OFFICER OSCAR

HERNANDEZ, TAX ID NO. 96754; POLICE OFFICER

JOSEPH OTTAVIANO, TAX ID. NO. 963677,

DETECTIVE RUBEN LEON, BADGE NO. 4232,

Defendants.

-----x

REMOTE DEPOSITION

of one of the Defendants:

POLICE OFFICER OSCAR HERNANDEZ

HELD: FRIDAY, FEBRUARY 11, 2022

11:04 a.m. - 2:16 p.m.

CASE #: 564508

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This is the ZOOM Deposition of one of the
Defendants POLICE OFFICER OSCAR HERNANDEZ,
taken pursuant to Order, held via ZOOM
VIDEOCONFERENCING; said witness being duly
sworn by and record reported via steno writer
by MICHELLE TROY PARRISH, Certified Court
Reporter and Certified Notary Public within
and for the State of New York

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A P P E A R A N C E S:

ALL PARTIES APPEARED REMOTELY

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ASSISTANT CORPORATION COUNSEL

1	I N D E X		
2	TO TESTIMONY		
3	WITNESS: POLICE OFFICER OSCAR HERNANDEZ		
4	EXAMINATION BY		PAGE(S)
5	MR. LORD		16
6	MR. GOSLING		197
7	TO EXHIBITS MARKED		
8	(1 - 4 & 7 & 8 attached to transcript;		
9	5 & 6 retained by counsel)		
10	PLAINTIFF'S	DESCRIPTION	PAGE
11	Exhibit 1	Police Accident Report	98
12		MV-104AN, Bates stamped	
13		D_00001 to D_00003,	
14		consisting of 3 pages;	
15		attached hereto	
16	Exhibit 2	NYPDPETS Property Clerk	111
17		Invoice, Invoice No.	
18		2000930421, Invoice Date	
19		12/15/2019, Bates stamped	
20		D_00004 to D_00006,	
21		consisting of 3 pages;	
22		attached hereto	
23	Exhibit 3	Arresting Officer's Report-	121
24		Intoxicated Driver Arrest,	
25		PD 271-152, IDTU Case No.	
		19-B-BX-116, Bates stamped	
		D_00023 to D_00026,	
		consisting of 4 pages;	
		attached hereto	
	Exhibit 4	Affidavit in Support of	144
		Declining/Deferring	
		Prosecution, Arrest Date:	
		12/15/2019, Bates stamped	
		D_00050 to D_00051,	
		consisting of 2 pages;	
		attached hereto	

1	I N D E X		
2	TO EXHIBITS MARKED		
3	(Cont'd)		
4	PLAINTIFF'S	DESCRIPTION	PAGE
5	Exhibit 5	Body cam video labeled AXON_BODY_2_VIDEO DEO_2019-12-15_0034;retained by counsel	159
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7	Exhibit 6	Body cam video labeled 2019-12-15_01-50-16;retained by counsel	173
8			
9	Exhibit 7	New York City Police Department Arrest Report B19649648, Bates stamped D_00016 to D_00019, consisting of 4 pages; attached hereto	189
10			
11	Exhibit 8	Online prisoner arraignment document for Williams, Garfield, #B19649648, Bates stamped D_00014 to D_00015, consisting of 2 pages; attached hereto	195
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1 REMOTE OATH BY REPORTER ACKNOWLEDGEMENT

2 The attorneys participating in this deposition
3 acknowledge that the reporter is not
4 physically present in the deposition room and
5 that he/she will be reporting this deposition
6 remotely. They further acknowledge that, in
7 lieu of an oath administered in person, the
8 reporter will administer the oath remotely,
9 pursuant to Executive Order Number 202.7,
10 issued by New York State Governor Andrew M.
11 Cuomo on March 19, 2020. All parties and
12 their counsel consent to this arrangement and
13 waive any objections to this manner of
14 reporting.

1 221. UNIFORM RULES FOR DEPOSITIONS

2 221.1 Objections at Depositions

3 a) Objections in general: No objections shall
4 be made at a deposition except those which,
5 pursuant to subdivision (b), (c) or (d) of
6 Rule 3115 of the Civil Practice Law and Rules,
7 would be waived if not interposed, and except
8 in compliance with subdivision (e) of such
9 rule. All objections made at a deposition
10 shall be noted by the officer before whom the
11 deposition is taken, and the answer shall be
12 given and the deposition shall proceed subject
13 to the objections and to the right of a person
14 to apply for appropriate relief pursuant to
15 Article 31 of the CPLR.

16 b) Speaking objections restricted: Every
17 objection raised during a deposition shall be
18 stated succinctly and framed so as not to
19 suggest an answer to the deponent and, at the
20 request of the questioning attorney, shall
21 include a clear statement as to any defect in
22 form or other basis of error or irregularity.
23 Except to the extent permitted by CPLR Rule
24 3115 or by this rule, during the course of the
25 examination, persons in attendance shall not

1 221. UNIFORM RULES FOR DEPOSITIONS

2 make statements or comments that interfere
3 with the questioning.

4 221.2 Refusal to answer when objection is made

5 A deponent shall answer all questions at a
6 deposition, except (i) to preserve a privilege
7 or right of confidentiality, (ii) to enforce a
8 limitation set forth in an order of the court,
9 or (iii) when the question is plainly improper
10 and would, if answered, cause significant
11 prejudice to any person. An attorney shall
12 not direct a deponent not to answer except as
13 provided in CPLR Rule 3115 or this
14 subdivision. Any refusal to answer or
15 direction not to answer shall be accompanied
16 by a succinct and clear statement of the basis
17 therefor. If the deponent does not answer a
18 question, the examining party shall have the
19 right to complete the remainder of the
20 deposition.

21 221.3 Communication with the deponent

22 An attorney shall not interrupt the deposition
23 for purposes of communicating with a deponent
24 unless all parties consent or communication is
25 made for the purpose of determining whether

1 221. UNIFORM RULES FOR DEPOSITIONS

2 the question should not be answered on the
3 grounds set forth in section 221.2 of these
4 rules and, in such event, the reason for the
5 communication shall be stated for the record
6 succinctly and clearly.

7 IT IS FURTHER STIPULATED AND AGREED that the
8 transcript may be signed before any Notary
9 Public with the same force and effect as if
10 signed before a clerk or a judge of the court.

11 IT IS FURTHER STIPULATED AND AGREED that the
12 examination before trial may be utilized for
13 all purposes as provided by the CPLR.

14 IT IS FURTHER STIPULATED AND AGREED that all
15 rights provided to all parties by the CPLR
16 cannot be deemed waived, and the appropriate
17 sections of the CPLR shall be controlling with
18 respect hereto.

19 IT IS FURTHER STIPULATED AND AGREED by and
20 between the attorneys for the respective
21 parties hereto that a copy of this examination
22 shall be furnished, without charge, to the
23 attorneys representing the witness testifying
24 herein.

25 * * * * *

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 THIS IS THE REMOTE ZOOM DEPOSITION OF POLICE
3 OFFICER OSCAR HERNANDEZ, one of the Defendants
4 herein, produced pursuant to ORDER, on FRIDAY,
5 FEBRUARY 11, 2022, before MICHELLE TROY
6 PARRISH, Certified Court Reporter and Notary
7 Public in and for the State of New York
8 herein.

9 * * * * *

10 THE COURT REPORTER: The
11 attorneys participating in this
12 deposition acknowledge that I
13 am not physically present in
14 the deposition room and that I
15 will be reporting this
16 deposition remotely. They
17 further acknowledge that, in
18 lieu of an oath administered in
19 person, the witness will be
20 sworn in remotely by a New York
21 notary and the witness verbally
22 declared his testimony in this
23 matter is underneath the
24 penalty of perjury. The
25 parties and their counsel

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 consent to this arrangement and
3 waive any objections to this
4 manner of reporting. Please
5 indicate your agreement by
6 stating your name and your
7 agreement on the record.

8 MR. LORD: Masai Lord for
9 Plaintiff. We agree.

10 MR. GOSLING: William
11 Gosling for defendant. I
12 represent Police Officer
13 Hernandez. No objections.

14 COURT REPORTER: Please
15 raise your right hand.

16 THE WITNESS: (The witness
17 complied.)

18 COURT REPORTER: Do you
19 solemnly swear or affirm the
20 testimony you give will be the
21 truth under penalty of perjury?

22 THE WITNESS: Yes.

23 COURT REPORTER: Please
24 state your name for the record.

25 THE WITNESS: Oscar

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 Hernandez, H-E-R-N-A-N-D-E-Z.

3 COURT REPORTER: Please
4 state your address for the
5 record.

6 THE WITNESS: One Police
7 Plaza, New York, New York
8 10038.

9 * * * * *

10 MR. LORD: Good morning,
11 Officer Hernandez.

12 THE WITNESS: Good
13 morning.

14 MR. LORD: Are you
15 comfortable being called
16 Officer Hernandez? Do you want
17 me to refer to you as something
18 else?

19 THE WITNESS: However you
20 feel comfortable.

21 MR. LORD: My name is
22 Masai Lord. I represent the
23 Plaintiff, Garfield Anthony
24 Williams, in relation to an
25 incident that took place on or

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 about December 15, 2019.
3 Briefly I'm going to talk about
4 how we can answer some
5 questions and the way to ensure
6 that the record is clear, and
7 then we'll kind of get into the
8 substance.

9 So, initially, you have
10 testified under oath before?

11 THE WITNESS: Yes.

12 MR. LORD: How many times,
13 approximately, have you
14 testified under oath?

15 THE WITNESS: I can't
16 recall how many times exactly.

17 MR. LORD: Could you give
18 an estimate?

19 THE WITNESS: About two or
20 three times.

21 MR. LORD: Have you ever
22 testified in a deposition
23 before?

24 THE WITNESS: What do you
25 mean by a "deposition"?

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 MR. LORD: In relation to
3 a lawsuit.

4 THE WITNESS: No.

5 MR. LORD: So, some rules
6 I'm going to go over very
7 briefly because obviously the
8 court reporter is transcribing
9 what is being said. We can't
10 do any verbal gestures. If you
11 do or make a movement, give me
12 an opportunity to explain that
13 movement so the court reporter
14 can take it down.

15 Let me finish each
16 question before you answer the
17 question to ensure that we're
18 not talking over each other and
19 that there is a clear
20 transcript. I think that's
21 pretty much it.

22 Do you understand those
23 instructions?

24 THE WITNESS: Yes.

25 MR. LORD: Do you have any

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 questions about those
3 instructions?

4 THE WITNESS: No.

5 MR. GOSLING: Mr. Lord,
6 quickly, before you begin, I
7 would just like to put for the
8 record, Officer Hernandez, if
9 you need to take a break at any
10 moment, just let us know and
11 you can take a break.

12 THE WITNESS: Thank you.

13 MR. LORD: If there is a
14 question pending, just finish
15 answering the question before
16 you take a break.

17 THE WITNESS: Got it.

18 MR. LORD: Okay. All
19 right.

20

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25

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 POLICE OFFICER OSCAR HERNANDEZ
3 called as the witness, hereinbefore named,
4 being first duly cautioned and sworn or
5 affirmed remotely by Michelle Troy Parrish,
6 Certified Court Reporter and Notary Public in
7 and for the State of New York herein, to tell
8 the truth, the whole truth, and nothing but
9 the truth, was examined and testified as
10 follows:

11 EXAMINATION

12 BY MR. LORD:

13 Q So, have you reviewed any
14 documents in preparation for this
15 deposition?

16 A Yes.

17 Q What documents did you
18 review?

19 A My arrest paperwork.

20 Q What does your arrest
21 paperwork consist of?

22 A Arrest complaint, the
23 vehicle accident, and the IDTU
24 paperwork.

25 Q Did you review any video in

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 preparation for this deposition?

3 A Yes.

4 Q What video did you review?

5 A My partner's body camera.

6 Q Is that the only video that
7 you reviewed?

8 A Yes.

9 Q As a result of this arrest
10 of Mr. Williams, did you prepare
11 any paperwork?

12 A Yes.

13 Q What paperwork did you
14 prepare in relation to that
15 arrest?

16 A I prepared some of the --
17 What do you mean by "prepared"?

18 Q Did you draft or create any
19 paperwork?

20 A I didn't create any
21 paperwork.

22 Q Did you fill out any forms
23 or do any writing in relation to
24 this case on a document?

25 A Yes, I filled out documents.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 Q What documents did you fill
3 out?

4 A I can't remember exactly
5 which documents I filled out.

6 Q Did you fill out the
7 accident report?

8 A I can't recall.

9 Q Do you recall if you filled
10 out the IDTU paperwork?

11 A Yes.

12 Q You did fill that out?

13 A Yes.

14 Q Did you fill out the arrest
15 paperwork?

16 A I can't recall.

17 Q Have you discussed this case
18 with anyone?

19 A Yes.

20 Q Outside of your attorney,
21 who did you discuss this case
22 with, if anyone?

23 A Not outside of my attorney.

24 Q Your attorney is the only
25 one who you discussed this case

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 with?

3 A Yes, about the case. Well,
4 with my partner shortly after
5 about what happened.

6 Q Shortly after, when?

7 A Like when we were on scene,
8 about what was going on with what
9 was happening in the situation.

10 Q When you say, situation, you
11 mean the lawsuit or the arrest?

12 A No, the arrest.

13 Q So, you are saying that soon
14 after the arrest you spoke with
15 your partner about what had taken
16 place?

17 MR. GOSLING: Objection.

18 You can answer.

19 A Yes.

20 BY MR. LORD:

21 Q That's the only time that
22 you spoke with your partner about
23 either the incident or this
24 pending lawsuit?

25 MR. GOSLING: Objection.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 You can answer.

3 A Yes.

4 BY MR. LORD:

5 Q I just want to get some
6 background information. What is
7 your highest level of education?

8 A I have an Associates degree.

9 Q Have you received any
10 commendations by the New York
11 Police Department?

12 MR. GOSLING: Objection.

13 You can answer.

14 A Yes, I have.

15 BY MR. LORD:

16 Q What commendations have you
17 received?

18 A I received an EPD.

19 Q What is an EPD?

20 A Basically it's an award you
21 get from the Department for doing
22 something good in the job that
23 happened, so you get, like, an
24 award for doing good police work.

25 Q What does EPD stand for?

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 A I don't know from the top of
3 my head.

4 Q When did you receive this
5 award or commendation?

6 A I don't know exactly.

7 Q Do you know the year?

8 A I don't want to give a wrong
9 date.

10 Q Do you know what you
11 received it for?

12 A Yes, for doing a good police
13 work.

14 Q Was there something specific
15 or this was a general award for
16 the police work you had done over
17 a span of time?

18 A No, for a specific
19 situation.

20 Q What was the specific
21 situation?

22 MR. GOSLING: Objection.

23 You can answer if you know.

24 A We had a robbery and we
25 caught the guy that committed the

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 crime.

3 BY MR. LORD:

4 Q Have you ever been formally
5 disciplined by the New York
6 Police Department?

7 A Yes.

8 Q And what discipline have you
9 received?

10 A One, for not turning on my
11 camera.

12 Q What was the discipline that
13 they gave you?

14 A CD.

15 Q What is a CD?

16 A It's basically a discipline
17 from the Police Department.

18 Q And does that result in any
19 type of punishment or is that
20 just a mark on your record?

21 A It goes on record.

22 Q So, you didn't lose any
23 vacation days or anything along
24 those lines?

25 A No.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 Q Have you ever been a
3 defendant in a lawsuit related to
4 your duties as a New York Police
5 Department officer?

6 A No.

7 Q So, is it fair to say that
8 this is the first time you have
9 been listed as a defendant?

10 A Yes.

11 Q Have you ever had any CCRB
12 complaints about you that have
13 been substantiated?

14 A No.

15 Q Because you haven't had any
16 CCRB complaints that were
17 substantiated, I'm assuming that
18 you have never been disciplined
19 as a result of a CCRB complaint,
20 is that right?

21 MR. GOSLING: Objection.

22 You can answer.

23 A I never had a CCRB.

24 BY MR. LORD:

25 Q What is your current title

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 in the New York Police
3 Department?

4 A Police officer.

5 Q Have you received any
6 promotions?

7 A No.

8 Q What year did you graduate
9 the police academy?

10 A 2019.

11 Q What are your current duties
12 as a police officer?

13 MR. GOSLING: Objection.

14 You can answer.

15 A To patrol my sector.

16 BY MR. LORD:

17 Q What is your sector?

18 A I patrol Sector David in my
19 precinct.

20 Q What is Sector David?

21 A Basically it's an area in
22 the precinct. The precinct is
23 cut up into different areas, and
24 I just answer jobs in my area.
25 I'm responsible for any crime

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 that happens in this sector.

3 Q Does Sector D have
4 geographical boundaries?

5 A What do you mean by that?

6 Q Is it marked by certain
7 streets or landmarks?

8 A Sectors, yes.

9 Q Can you explain what streets
10 are marked Sector D?

11 A There is no physical marking
12 on the streets.

13 Q I'm just saying, is it,
14 like, does Sector D go to one
15 street and stop?

16 A Yes.

17 MR. GOSLING: Objection.
18 You can answer.

19 BY MR. LORD:

20 Q So, can you name the
21 boundary streets for Sector D?

22 MR. GOSLING: Objection.
23 You can answer.

24 A So, Sector David starts from
25 Southern Boulevard all the way to

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 Morris Park Avenue.

3 BY MR. LORD:

4 Q Was this incident that took
5 place in December 15, 2019, was
6 this in Sector D?

7 A No. I just got this
8 position.

9 Q So, what were your duties
10 before you got this position?

11 A I was just patrolling,
12 answering radio runs as a
13 response auto.

14 Q And can you just describe
15 what the duties of a response
16 auto are?

17 A To answer 911 calls.

18 Q You answered 911 calls in
19 your precinct or outside of your
20 precinct or both?

21 A In my precinct.

22 Q And how long were you in
23 that role for?

24 A For some time.

25 Q Can you give me an estimate

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 of what you mean by "some time"?

3 A About a couple of years.

4 Q Have you done any other
5 duties besides the two that you
6 just mentioned?

7 MR. GOSLING: Objection.
8 You can answer.

9 A No.

10 BY MR. LORD:

11 Q Have you served in the
12 military?

13 A No.

14 Q I know we touched this
15 previously earlier. How many
16 times have you testified under
17 oath?

18 MR. GOSLING: Objection.
19 You can answer.

20 A About a few times.

21 BY MR. LORD:

22 Q By "few," do you mean
23 approximately three times?

24 MR. GOSLING: Objection.
25 You can answer.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 A Approximately about two or
3 three times.

4 BY MR. LORD:

5 Q And were these in criminal
6 or civil proceedings?

7 MR. GOSLING: Objection.

8 You can answer.

9 A Criminal.

10 Q And did you take an oath to
11 testify in those instances?

12 A Yes.

13 Q Have you received training
14 in how to testify?

15 MR. GOSLING: Objection.

16 You can answer.

17 A No.

18 BY MR. LORD:

19 Q How many arrests have you
20 made?

21 MR. GOSLING: Objection.

22 You can answer.

23 A I have a total of 34
24 arrests.

25

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 BY MR. LORD:

3 Q How many arrests have you
4 made for DWI?

5 MR. GOSLING: Objection.

6 You can answer.

7 A Three.

8 BY MR. LORD:

9 Q When you say, "three," are
10 you including the arrest that is
11 the subject of this lawsuit?

12 MR. GOSLING: Objection.

13 You can answer.

14 A Yes.

15 BY MR. LORD:

16 Q Do you know the result of
17 the two other arrests for DWI
18 that you had made?

19 MR. GOSLING: Objection.

20 You can answer.

21 A What do you mean by, "the
22 result"?

23 BY MR. LORD:

24 Q Did they result in
25 prosecution?

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 MR. GOSLING: Objection.

3 You can answer.

4 A Well, they are still
5 pending.

6 BY MR. LORD:

7 Q So, the District Attorney's
8 office decided to prosecute those
9 matters?

10 MR. GOSLING: Objection.

11 You can answer.

12 A Yes.

13 BY MR. LORD:

14 Q Have you received training
15 in how to prepare accident
16 reports?

17 A Yes.

18 Q Where did you receive that
19 training?

20 A In the police academy.

21 Q Have you received any
22 supplemental training besides the
23 police academy in preparing
24 accident reports?

25 A No.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 Q Have you received any
3 training in the signs of
4 intoxication related to a DWI?

5 A What do you mean?

6 MR. LORD: Withdrawn.

7 BY MR. LORD:

8 Q Have you received any
9 training related to the Penal Law
10 charge of driving while under the
11 influence?

12 MR. GOSLING: Objection.

13 You can answer.

14 A Yes.

15 BY MR. LORD:

16 Q Did that training involve
17 the signs of intoxication?

18 A Yes.

19 Q When did you receive that
20 training?

21 MR. GOSLING: Objection.

22 You can answer.

23 A In the police academy.

24 BY MR. LORD:

25 Q Have you received any

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 supplemental training outside of
3 the police academy?

4 MR. GOSLING: Objection.
5 You can answer.

6 A No.

7 BY MR. LORD:

8 Q Can you describe to me what
9 that training consisted of in
10 relation to driving while
11 intoxicated?

12 MR. GOSLING: Objection.
13 You can answer.

14 A What do you mean by
15 "consisted of"?

16 BY MR. LORD:

17 Q What did they teach you
18 about this charge?

19 MR. GOSLING: Objection.
20 You can answer.

21 A They taught us basically
22 what I can remember is how to
23 tell by observation if there is
24 signs of any driving while
25 intoxication.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 BY MR. LORD:

3 Q And what are some things
4 that they told you to look for?

5 MR. GOSLING: Objection.

6 You can answer.

7 A My observation, bloodshot
8 eyes, watery eyes, slurred
9 speech, odor of alcohol, swaying
10 and balance, any vehicle
11 accidents.

12 BY MR. LORD:

13 Q Is there anything else?

14 A Not that I recall.

15 Q So, I want to direct your
16 attention to December 15, 2019.
17 What was your tour on that day?

18 A I was working midnight tour.

19 Q And when did that tour begin
20 and when does it end?

21 A I don't know the exact time.
22 I think it starts around 11:00
23 something.

24 Q When?

25 MR. GOSLING: Just so it's

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 clear for the record, when it
3 says the "midnight" tour, if
4 it's staring at 11:00, it would
5 be the night before, so it
6 would have been December 14th.

7 MR. LORD: Okay. Thank
8 you.

9 BY MR. LORD:

10 Q And assuming you started
11 around 11:00 on December 14,
12 2019, when was your tour due to
13 end?

14 A Sometime around the morning,
15 around 6:00, 7:00 A.M.

16 Q Were you in plain clothes or
17 uniform?

18 A Uniform.

19 Q Were you working with a
20 partner?

21 A Yes.

22 Q Who was the partner you were
23 working with?

24 MR. GOSLING: Objection.
25 You can answer.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 A Police Officer Ottaviano.

3 BY MR. LORD:

4 Q Do you know Police Officer
5 Ottaviano's first name?

6 A No.

7 MR. GOSLING: Spelled
8 O-T-T-A-V-I-A-N-O.

9 BY MR. LORD:

10 Q Prior to this incident how
11 long had Officer Ottaviano been
12 your partner?

13 A I can't recall.

14 Q Do you recall how long he
15 was your partner after the
16 incident?

17 A I can't recall.

18 Q Do you know how many times
19 approximately you guys had
20 responded to calls together?

21 A What was that?

22 Q How many times you had
23 responded to calls together with
24 Ottaviano as your partner?

25 MR. GOSLING: Objection.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 You can answer.

3 A I don't know the exact
4 number.

5 BY MR. LORD:

6 Q Could you give an estimate?

7 A I don't have an estimate.

8 Q Were you in a marked or
9 unmarked car?

10 A Marked.

11 Q Were you part of a larger
12 unit or was it just you and
13 Officer Ottaviano?

14 MR. GOSLING: Objection.

15 You can answer.

16 A What do you mean by "larger
17 unit"?

18 BY MR. LORD:

19 Q When you get a call to
20 respond, do you and Officer
21 Ottaviano just go and respond or
22 are there multiple cars that will
23 respond to the same call?

24 MR. GOSLING: Objection.

25 Counsel, can you clarify

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 the time period you are talking
3 about?

4 MR. LORD: I'm talking
5 about at this time around
6 December 14, 2019, to December
7 15, 2019, whether that was a
8 policy.

9 A Well, it depends on the type
10 of job that we go how many
11 officers respond.

12 BY MR. LORD:

13 Q So, how many officers
14 responded to this job?

15 A I don't recall.

16 Q Did you possess body cam?

17 A Yes, I did.

18 Q What is the policy regarding
19 the use of body cam with these
20 types of incidences?

21 MR. GOSLING: Objection.
22 To the extent that you know you
23 can answer.

24 A We had to turn on our body
25 camera at certain jobs.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 BY MR. LORD:

3 Q What type of jobs do you
4 turn on your body cam?

5 A Usually the primary jobs, a
6 crime in progress.

7 Q And did the job you
8 responded to on December 15, 2019
9 fall into the category of alleged
10 crimes where you have to use your
11 body camera?

12 A I would not know that from
13 the top of my head.

14 Q So, as you responded to the
15 scene, were you under the
16 impression that you did or did
17 not have to keep your body camera
18 on?

19 MR. GOSLING: Objection.

20 You can answer.

21 A What do you mean by that?

22 BY MR. LORD:

23 Q Well, you had a body cam on
24 your tour from December 14, to
25 December 15, 2019, correct?

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 A Yes.

3 Q And at some time you
4 responded to a radio run
5 regarding an accident, is that
6 what happened?

7 A Yes.

8 Q When you responded to that
9 radio run regarding an accident,
10 was it your understanding that
11 your body camera had to be on?

12 A No, because the job wasn't a
13 crime in progress.

14 Q So, we kind of touched on
15 this briefly. When did you first
16 hear of something that happened
17 on December 14, 2019 regarding
18 the subject matter of this
19 lawsuit?

20 MR. GOSLING: Objection.

21 You can answer.

22 A Well, I was patrolling and I
23 received a Central Dispatch job
24 for a vehicle accident.

25

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 BY MR. LORD:

3 Q And is that Central Dispatch
4 recorded?

5 A I'm not sure.

6 Q And you were responding to a
7 vehicle accident in a vehicle
8 accident only?

9 A From my understanding at the
10 time, yes.

11 Q Was there indication that
12 you were responding to a
13 potential DWI?

14 A What do you mean?

15 Q Did the call you received
16 from Central Dispatch give any
17 indication that there was a
18 potential DWI taking place --
19 that had taken place?

20 A I don't recall.

21 Q Now, when you received this
22 radio run did you talk to your
23 partner about where you guys were
24 going?

25 MR. GOSLING: Objection.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 You can answer.

3 A No.

4 BY MR. LORD:

5 Q Was there conversation
6 between you and this partner
7 relating to you responding to the
8 scene?

9 MR. GOSLING: Objection.

10 You can answer.

11 A No.

12 BY MR. LORD:

13 Q How long did it take you to
14 get to the destination?

15 MR. GOSLING: Objection.

16 You can answer.

17 A I don't recall how long it
18 took.

19 BY MR. LORD:

20 Q Could you give an estimate?

21 A No.

22 Q Do you remember where the
23 scene of the accident was?

24 A 177 and Bronx Park.

25 Q I just want to talk to you

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 about your observations. What
3 did you see when you arrived?

4 A When I arrived on scene I
5 see an ESU truck and a couple of
6 ESU officers. I saw a vehicle
7 there, a sedan with a front-end
8 damage, and there was another
9 vehicle there.

10 Q You said, the vehicle -- one
11 vehicle had front-end damage,
12 correct?

13 A It was a sedan.

14 Q Were you able to see damage
15 to the other vehicle?

16 A No.

17 Q How many ESU officers did
18 you see when you arrived?

19 A I can't recall the exact
20 amount of officers that were
21 there.

22 Q Were there any other non-ESU
23 officers there besides you and
24 your partner when you arrived?
25 You said there were ESU officers

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 there when you arrived, correct?

3 A Yes.

4 Q And you and your partner are
5 not ESU officers, correct?

6 A Correct.

7 Q Were there any other non-ESU
8 officers that were there besides
9 you and your partner?

10 A Are you asking if there was
11 any other officers on scene?

12 Q Yes, that were not ESU
13 officers.

14 A No, not that I recall.

15 Q Were there people who were
16 present who were not police
17 officers at all?

18 A Yes.

19 Q Who were those people?

20 A There was woman sitting in
21 the front passenger of the other
22 vehicle that I saw, and there was
23 another male with a Christmas
24 sweater.

25 Q Was there anybody else?

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 A There was also the driver of
3 the other vehicle.

4 Q So, what is the first thing
5 you did when you arrived on the
6 scene?

7 A When I arrive on scene, I
8 speak to one of the ESU officers
9 about what happened, what was
10 going on.

11 Q And do you know the name of
12 this ESU officer?

13 A No.

14 Q What was the content of the
15 conversation with the ESU
16 officer?

17 A About what was going on on
18 the scene about this job.

19 Q What did he say to you?

20 A He mentioned that there was
21 a vehicle accident and that the
22 driver that was sitting in the
23 back of one of the vehicles
24 seemed to be impaired.

25 Q He said he seem to be

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 impaired?

3 A To be intox'd.

4 Q What did you do after
5 hearing that information?

6 A I walked toward the car
7 where the other driver was.

8 Q When you say -- Step back
9 for a second. He told you that
10 he appeared to be intoxicated.
11 Did he say why?

12 A No.

13 Q Did he say that he smelled
14 any alcohol?

15 A Not at the time.

16 Q So, you said you went to the
17 car where he was sitting in the
18 back seat, this individual?

19 A I walked towards that car,
20 yes.

21 Q Do you know the name of the
22 individual that he was talking
23 about, this ESU officer?

24 A Not at the time.

25 Q Did you ever come to find

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 out that name?

3 A Yes.

4 Q What was his name?

5 A Garfield.

6 Q Did this ESU officer ever
7 tell you that Garfield was
8 represented by counsel?

9 MR. GOSLING: Objection.

10 You can answer.

11 A No.

12 BY MR. LORD:

13 Q So, what happens when you
14 walk towards the car? What
15 happens next?

16 A I was approached by a male
17 in a Christmas sweater.

18 Q What did the male in the
19 Christmas sweater say to you?

20 A He was saying that he was an
21 attorney and that we couldn't
22 speak to his client.

23 Q And what did you do with
24 that information?

25 A I told him that we needed to

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 gather information about what
3 exactly occurred in this accident
4 and we needed pedigree
5 information.

6 Q So, what is pedigree
7 information?

8 A Pedigree information would
9 be first name, last name, date of
10 birth, address, drivers license,
11 insurance, and registration.

12 Q Are you saying that you did
13 not have that information when
14 you went to speak with him,
15 Garfield?

16 A I hadn't spoken to him yet.

17 Q Did anyone give you any
18 documents related to the pedigree
19 information for Mr. Williams?

20 A Not at the time, no.

21 Q When did you receive these
22 documents?

23 A I don't recall.

24 Q You did receive them at some
25 point, correct?

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 A Correct.

3 Q Would you agree that
4 pedigree information is generally
5 related to an arrest?

6 MR. GOSLING: Objection.

7 You can answer.

8 A No.

9 BY MR. LORD:

10 Q Is there a reason why his
11 attorney could not have given you
12 this information?

13 A How do I know that the
14 information he is giving me is
15 from the driver that was involved
16 in the vehicle accident? He
17 could just be giving me any
18 information.

19 Q You said you needed license,
20 correct?

21 A I said I needed information
22 of the vehicle that occurred in
23 what happened.

24 Q So, when you say you needed
25 information about what happened,

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 you consider that pedigree
3 information?

4 A No, I said I needed to know
5 what exactly happened in and
6 occurred and I also needed
7 pedigree information.

8 Q So, it's fair to say there
9 is two types of information;
10 there is pedigree information and
11 there is information about what
12 happened, is that fair to say?

13 A Yes.

14 Q So, let's talk about the
15 pedigree information first.
16 Pedigree information is
17 identification and vehicle
18 insurance and title and things of
19 that nature, is that fair to say?

20 MR. GOSLING: Objection.

21 You can answer.

22 A Yes.

23 BY MR. LORD:

24 Q And those things can be
25 provided by documents and

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 identification, correct?

3 A Yes.

4 Q And a lawyer can provide you
5 with those documents?

6 MR. GOSLING: Objection.

7 You can answer.

8 A What do you mean by "a
9 lawyer can provide" those
10 information?

11 BY MR. LORD:

12 Q Well, the information that
13 you wanted is written down on
14 official documents and licenses,
15 correct?

16 A Yes.

17 Q So, those things are items
18 that can physically be
19 transported by an attorney to
20 you, correct?

21 A Yes, I guess.

22 Q So, is there any reason why
23 you did not ask the attorney to
24 transport you his pedigree
25 information?

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 A Well, we wanted to speak to
3 the driver that was involved in
4 the vehicle accident to know what
5 exactly happened.

6 Q You mentioned earlier that
7 another officer told you he
8 suspected Mr. Williams was
9 intoxicated, correct?

10 A Yes.

11 Q So, is it fair to say that
12 you are conducting an
13 investigation at this point to
14 determine whether or not he was
15 intoxicated?

16 A No, I was just gathering
17 information to see what was going
18 on at the scene.

19 Q So, you are saying that you
20 were not conducting an
21 investigation in terms of whether
22 or not he was intoxicated?

23 A That is not what I'm saying.

24 Q So, explain to me what you
25 are saying.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 A What I'm saying is I asked
3 the ESU officer for what was
4 going on in this vehicle accident
5 in this scene because I just
6 arrived on scene, so I don't know
7 what exactly is going on. They
8 were there first. They know what
9 exactly -- They know more than we
10 do at that point.

11 Q Okay. Once you received
12 that information, did you conduct
13 an investigation to determine
14 whether Mr. Williams was
15 intoxicated or not?

16 A Not at that point. At that
17 point I walked over to the
18 vehicle where Williams, Garfield
19 was to try and speak to him about
20 what occurred, what happened or
21 how did the accident happen, and
22 I asked for pedigree information.

23 Q So, what happened when you
24 attempted to do this?

25 A I was approached by the male

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 with the Christmas sweater.

3 Q I'm sorry, you can finish.

4 A Yes, who said that he was an
5 attorney and that he didn't want
6 us speaking to his client.

7 Q What happened after he told
8 you that?

9 A I let him know that we need
10 to know what happened, we need to
11 start an investigation about what
12 happened in this vehicle accident
13 and how it happened and we need
14 to know who was involved and we
15 need to know their pedigree
16 information.

17 Q So, what happened after you
18 said that to the man in the
19 Christmas sweater?

20 A He kept saying that we
21 couldn't speak to him, to his
22 client.

23 Q And what happened after he
24 told you that?

25 A We -- I stayed there at that

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 vehicle. My partner was speaking
3 to the driver of the other
4 vehicle that was involved, and he
5 comes over to me, we opened the
6 door, the door opens, we see
7 Garfield, and a female sitting in
8 the driver's seat. Garfield was
9 sitting in the back passenger
10 seat. He faces us. I noticed
11 that he had bloodshot eyes and
12 watery eyes.

13 Q And then what do you do?

14 A He steps out the vehicle.
15 My partner says that he is under
16 arrest. We put him in handcuffs.
17 I noticed that he had a moderate
18 odor of alcohol coming from his
19 breath. I see that he is
20 swaying, imbalanced.

21 Q So, did you order him out of
22 the vehicle?

23 A I don't recall.

24 Q When you say he got out of
25 the vehicle, did he get out

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 voluntarily or he got out because
3 you are were placing him under
4 arrest?

5 A I don't recall.

6 Q Did your partner tell you
7 anything about the conversation
8 he had with the other driver?

9 A He told me afterwards.

10 Q So, prior to arresting Mr.
11 Williams, he did not tell you
12 anything about that conversation?

13 MR. GOSLING: Objection.

14 You can answer.

15 A No.

16 BY MR. LORD:

17 Q So, is it fair to say that
18 when you opened the door, you
19 intended to arrest Mr. Williams?

20 A No.

21 Q Well, what happened after
22 you opened the door that made you
23 decide to arrest him?

24 A Well, we opened the door, he
25 came out the vehicle. My partner

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 says he was under arrest.

3 Q So, when you opened the
4 door, he was under arrest?

5 A No.

6 Q Was there something that
7 happened when you opened the door
8 that made you decide to arrest
9 him?

10 A Like I said, he opened the
11 door, he came out the vehicle.
12 My partner said, you are under
13 arrest.

14 Q Had you discussed this
15 arrest with your partner?

16 A What do you mean? When?

17 Q Prior to him telling Mr.
18 Williams he was under arrest.

19 A No.

20 Q Did you know that your
21 partner was going to arrest Mr.
22 Williams?

23 MR. GOSLING: Objection.

24 You can answer.

25 A No.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 BY MR. LORD:

3 Q So, is it fair to say that
4 your partner is the one who made
5 the determination to arrest him?

6 A At that point, yes.

7 Q Did you agree with that
8 determination at that time?

9 A Yes.

10 Q Why did you agree with that
11 determination?

12 A Because when I arrived on
13 scene, like I said, I spoke to an
14 ESU officer which said that
15 Garfield, Williams appeared to be
16 intox'd and there was a vehicle,
17 an accident involved, and when
18 they opened the door I see that
19 Williams, Garfield had bloodshot
20 eyes and watery eyes.

21 Q And did you know whether the
22 accident he was involved in was
23 serious or not, Mr. Williams?

24 A What do you mean by
25 "serious"?

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 Q Well, how would you
3 categorize a serious car
4 accident?

5 A I don't categorize an
6 accident by serious or not.

7 Q You don't look at an
8 accident and determine whether
9 it's serious or not?

10 MR. GOSLING: Objection.

11 You can answer.

12 A No. We don't use "serious"
13 as a term for our vehicle
14 accidents.

15 BY MR. LORD:

16 Q What terms do you use?

17 A We don't use any terms.
18 It's just a vehicle accident.

19 Q Are some vehicle accidents
20 worse than others?

21 A Yes.

22 Q On a scale of one to ten,
23 how serious would you rate this
24 accident?

25 A I wouldn't. I can't do

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 that. We don't. I don't know
3 what do you mean by "rate this
4 accident"?

5 Q Well, were airbags deployed?

6 A I'm not sure.

7 Q Was the car totalled?

8 A The car had pretty bad
9 damage, yes.

10 Q So, yes, was the car
11 totalled?

12 A I'm not sure.

13 MR. GOSLING: Objection.

14 BY MR. LORD:

15 Q So, when you say when the
16 car had pretty bad damage, what
17 do you mean by that?

18 A The car was heavily damaged.

19 MR. GOSLING: Can we
20 clarify what car we're
21 referring to? Because the
22 testimony is multiple cars on
23 the scene. It's really not
24 clear what the line of
25 questioning is.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 MR. LORD: That's fair.

3 BY MR. LORD:

4 Q Which car are you talking
5 about when you say the car was
6 heavily damaged?

7 A There was sedan with
8 front-end damage.

9 Q And you would categorize the
10 sedan's front-end damage as
11 heavily damaged, correct?

12 A Yes.

13 Q In your experience can
14 someone be injured in a car
15 accident that results in heavy
16 damage?

17 MR. GOSLING: Objection.

18 You can answer.

19 A I can't answer that question
20 because every accident is
21 different.

22 BY MR. LORD:

23 Q Can someone be injured in a
24 car accident?

25 MR. GOSLING: Objection.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 You can answer.

3 A Of course. Anybody can be
4 injured in a vehicle accident.

5 BY MR. LORD:

6 Q Could those injuries result
7 in bloodshot, watery eyes?

8 MR. GOSLING: Objection.
9 He is not a medical expert
10 here.

11 MR. LORD: Based on his
12 experience, whether he knows or
13 not.

14 MR. GOSLING: You can
15 answer if you know.

16 A No, I don't know.

17 BY MR. LORD:

18 Q Now, you said you smelled
19 the odor of alcohol, correct?

20 A Yes.

21 Q When did you smell this odor
22 of alcohol?

23 A When he stepped out the
24 vehicle and he turned around.

25 Q This was when you were

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 placing him under arrest?

3 A Yes.

4 Q So, it's fair to say that
5 you smelled the odor of alcohol
6 after he had been arrested?

7 A Yes.

8 Q How strong was the odor?

9 A It was a moderate.

10 Q What did it smell like, what
11 type of alcoholic beverage?

12 MR. GOSLING: Objection.

13 You can answer if you know.

14 A I don't know.

15 BY MR. LORD:

16 Q So, what happened after you
17 placed him under arrest?

18 A He was under arrest. We
19 called an ambulance for him.

20 Q So, was the ambulance on the
21 scene already or you called it
22 after he was arrested?

23 A We called it.

24 Q Why did you call it?

25 A To make sure he didn't have

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 any injuries.

3 Q Did he request an ambulance?

4 A I don't recall.

5 Q Would you have called an
6 ambulance if he had not requested
7 it?

8 A If he RMA'd then, no.

9 Q Was there EMS on the scene?

10 A They were there after we
11 called them, yes.

12 Q RMA means refused medical
13 attention, is that fair to say?

14 A Yes.

15 Q How long did it take EMS to
16 get to the scene?

17 MR. GOSLING: Objection.

18 You can answer.

19 A I'm not sure.

20 BY MR. LORD:

21 Q Can you give a time
22 estimate, 10, 15, 20, 30, 40,
23 anything?

24 A No, I can't give an
25 estimate.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 Q What was going on while you
3 were waiting for EMS to arrive?

4 A I don't recall.

5 Q So, what happened when EMS
6 arrived?

7 A Williams, Garfield went
8 inside the ambulance and he was
9 getting checked out by EMS.

10 Q Did anything happen while he
11 was going towards the ambulance
12 or while he was in the ambulance
13 that effected your determination
14 whether or not he was
15 intoxicated?

16 A Not that I recall.

17 Q When did you speak to your
18 partner about what the other
19 driver told him?

20 A When we went back to the
21 precinct.

22 Q So, it's fair to say prior
23 to going back to the precinct you
24 had no idea what the other driver
25 had said?

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 A Correct.

3 Q What was the color of Mr.
4 William's face?

5 A What do you mean, what
6 color?

7 Q Was the color of the face
8 normal, flushed, pale or
9 something else?

10 A I don't recall.

11 Q We're talking about when you
12 placed him under arrest, what was
13 the condition of his clothes;
14 were they orderly or soiled,
15 disarranged or disorderly?

16 A I don't recall.

17 Q What was Mr. Williams'
18 attitude? Was he combative? Was
19 he cooperative? Was he
20 uncooperative? Something else?

21 A He didn't want to say
22 anything. He didn't want to
23 talk.

24 Q How would you characterize
25 someone who doesn't want to talk?

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 A Uncooperative.

3 Q So, you are saying he was
4 uncooperative because he didn't
5 want to talk to you?

6 A He didn't want to give no
7 information about what was going
8 on.

9 Q And was he cursing or
10 belching or vomiting or
11 hiccupping or fighting or
12 anything along those lines?

13 A No.

14 Q What was the condition of
15 his eyes when you placed him
16 under arrest?

17 A I saw that he was bloodshot
18 and watery.

19 Q What was his balance? Was
20 he steady?

21 A No. He was not steady. He
22 was swaying and unbalanced.

23 Q How was he swaying and
24 unbalanced?

25 A He couldn't stand up on his

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 own. He was swaying and, then he
3 proceeded to lean on the car
4 instead of standing up straight.

5 Q Was his speech clear or was
6 it slurred?

7 A It was clear.

8 Q So, what happened after he
9 went into the ambulance?

10 A After he went into the
11 ambulance, EMS checked him out.
12 They asked him a few questions
13 about his condition, if any pain
14 and stuff like that. He was
15 transported to Jacobi Hospital.

16 Q So, were you present when
17 EMS was having this conversation
18 with Mr. Williams?

19 A No, not all of the
20 conversation.

21 Q Did you hear some of the
22 conversation?

23 A Some, yes.

24 Q Did you hear any responses
25 as to what was wrong with him or

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 how he felt?

3 A Not any that I can recall.

4 Q Do you recall anything that
5 -- any answers that he had to the
6 EMS?

7 A No.

8 Q How long did it take to
9 transport him to Jacobi Hospital?

10 A I'm unsure.

11 MR. GOSLING: Objection.
12 You can answer.

13 BY MR. LORD:

14 Q Were you in the ambulance
15 when he was transported with
16 them?

17 A I don't recall.

18 Q So, you don't recall whether
19 you were in the ambulance when he
20 was transported to the hospital?

21 A Yes, I don't recall where I
22 was.

23 Q Do you recall where your
24 partner was?

25 A No.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 Q Do you recall anything that
3 happened on that journey to the
4 hospital?

5 A No.

6 Q What happened after you
7 arrived at Jacobi Hospital?

8 A After we arrived to Jacobi
9 Hospital, he was placed in the ER
10 section. His attorney showed up.
11 Well, once we arrived to Jacobi
12 Hospital, he was placed in the
13 ER. My partner stayed at the
14 hospital and I left back to the
15 precinct to retrieve leg
16 shackles.

17 Q So, when he arrived at the
18 hospital, you went to the ER
19 waiting room, is that what
20 happened?

21 A No. I was at the ER section
22 with him.

23 Q How long were you in that
24 section with him?

25 A I can't recall.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 Q Were you able to observe him
3 while you were awaiting in the ER
4 room?

5 A Yes.

6 Q Did he continue to show
7 signs of intoxication?

8 A Yes.

9 Q What signs did he continue
10 to show?

11 A He had the bloodshot eyes
12 and watery eyes.

13 Q Did he have anything else?

14 A Not at that point.

15 Q You said at some point you
16 left the hospital?

17 A Yes.

18 Q Why did you leave the
19 hospital?

20 A I went to the precinct to
21 retrieve leg shackles and other
22 paperwork I would need.

23 Q Why did you need leg
24 shackles?

25 A Because every time we have a

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 person under arrest in our
3 custody in the hospital, they
4 need leg shackles.

5 Q Is that the hospital policy
6 or is that the NYPD policy?

7 A NYPD policy.

8 Q So, how long did it take you
9 to go back to the precinct?

10 A I'm not sure.

11 Q Can you give a time estimate
12 for how long it took?

13 A I don't want to give a wrong
14 time.

15 Q You said he received
16 paperwork at the precinct,
17 correct?

18 A What was that?

19 Q You recovered paperwork
20 while you were at the precinct?

21 A Yes.

22 Q What paperwork did you
23 recover?

24 A Medical treatment form.

25 Q And did you fill out that

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 medical treatment form?

3 A Yes.

4 Q So, what happened after you
5 recovered the shackles and filled
6 out the medical treatment form?

7 A I headed back to the
8 hospital.

9 Q And what happened when --
10 What did you observe when you
11 went back to the hospital?

12 A What do you mean, what did I
13 observe going back to the
14 hospital?

15 Q I will rephrase it. What
16 happened when you went back to
17 the hospital?

18 A So, I went back to the
19 hospital. IDTU, which is the
20 Highway Unit, responded shortly
21 after I arrived.

22 Q And do you know how long it
23 took them to arrive after you
24 returned?

25 MR. GOSLING: Objection.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 You can answer.

3 A I don't know the specific
4 time.

5 BY MR. LORD:

6 Q And did you place Mr.
7 Williams in shackles?

8 A I don't recall if I did it.

9 Q But he was placed in
10 shackles?

11 A Yes.

12 Q And were you able to observe
13 him during this time?

14 A Yes.

15 Q Was Mr. Williams still
16 showing signs of intoxication,
17 according to you?

18 A Yes.

19 Q What were the signs he was
20 showing?

21 A Bloodshot and watery eyes.

22 Q And that's it?

23 A From where I was, yes.

24 Q So, what happened after IDTU
25 arrived?

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 A IDTU proceeded to conduct
3 the IDTU paperwork that they do
4 for DWI.

5 Q The person with the
6 Christmas sweater, was he there
7 when this was taking place?

8 A He did.

9 Q When did he arrive?

10 A He arrived while IDTU was
11 there.

12 Q And was it just him or was
13 it him and somebody else?

14 MR. GOSLING: Objection.

15 You can answer.

16 A I don't recall.

17 BY MR. LORD:

18 Q So, what happens when the
19 IDTU is filling out his
20 paperwork?

21 A The man with the Christmas
22 sweater is there and IDTU and he
23 is telling Garfield Williams to
24 not answer anything and to refuse
25 everything.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 Q And what happened after he
3 tells Mr. Williams to refuse
4 everything?

5 A Garfield does not want to
6 say anything. He refuses to draw
7 blood. He refuses to conduct any
8 tests or answer any following
9 questions.

10 Q Did Mr. Williams himself
11 tell you that he refused?

12 A Yes.

13 Q And you asked him to draw
14 blood?

15 A I don't recall if I did or
16 the IDTU unit did.

17 Q But someone asked him if he
18 wanted to draw blood?

19 A Yes.

20 Q And he refused?

21 A Yes.

22 Q Were any other tests
23 conducted?

24 A There was tests conducted.
25 He refused everything.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 Q So, he refused coordination
3 tests as well?

4 A What do you mean?

5 Q Do you know what
6 coordination tests are in
7 relation to DWI?

8 A We don't give coordination
9 tests. That would be up to IDTU
10 give those tests either. I
11 wouldn't know.

12 Q Did IDTU ask him to give
13 coordination tests?

14 A I don't recall.

15 Q Did the individual in the
16 Christmas sweater say why he was
17 telling Mr. Williams to refuse?

18 A I don't recall.

19 Q So, did you have a
20 conversation with the IDTU about
21 whether or not Mr. Williams was
22 intoxicated?

23 A No, I don't recall.

24 Q Do you know if the IDTU
25 technician came to a conclusion

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 whether or not he was
3 intoxicated?

4 A I don't recall.

5 Q Does the IDTU technician's
6 conclusion about whether or not
7 someone is intoxicated have any
8 impact on whether you think you
9 have probable cause to arrest?

10 A No, because we already had
11 probable cause at the scene.

12 Q So, you are saying that
13 regardless of what the IDTU
14 technician said, you were going
15 to continue to arrest Mr.
16 Williams?

17 MR. GOSLING: Objection.
18 You can answer. That's a
19 mischaracterization, but you
20 can answer.

21 A Well, we already had
22 probable cause at the scene due
23 to ESU officer telling us that he
24 was intoxicated, he being
25 involved in a motor vehicle

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 accident and having bloodshot
3 eyes, moderate odor of alcohol
4 and swaying, imbalance, gave us
5 probable cause to put him under
6 arrest.

7 BY MR. LORD:

8 Q If the ESU technician had
9 not told you that he thought he
10 was intoxicated, would that have
11 affected your probable cause?

12 A No, because I wouldn't know
13 what would be the result of my
14 investigation.

15 Q If the IDTU technician told
16 you that he thought that Mr.
17 Williams was not intoxicated,
18 would that affect your
19 determination of probable cause?

20 MR. GOSLING: Objection.
21 You can answer.

22 A No.

23 BY MR. LORD:

24 Q So, once you made the
25 decision to arrest Mr. Williams,

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 there was evidence to be
3 presented with that would affect
4 your probable cause
5 determination?

6 A What do you mean by that?

7 Q Is there any evidence that
8 you could be presented with that
9 would cause you to believe that
10 Mr. Williams was not intoxicated?

11 A (Witness' response was
12 inaudible.)

13 MR. GOSLING: Can we just
14 clarify the answer for the
15 record? Are you saying, "I
16 wouldn't know," or the answer
17 is just "No"?

18 THE WITNESS: I wouldn't
19 know.

20 BY MR. LORD:

21 Q I thought that contradicted
22 what you just said.

23 A I don't get what you are
24 trying to say here.

25 MR. LORD: I will re-ask

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 the question.

3 BY MR. LORD:

4 Q Is there any evidence that
5 you could have been presented
6 with after you placed Mr.
7 Williams under arrest that would
8 affect your probable cause
9 determination?

10 MR. GOSLING: Objection.

11 You can answer.

12 A No, because we already had
13 probable cause to arrest him for
14 being intox'd.

15 BY MR. LORD:

16 Q So, there is no additional
17 evidence that would have changed
18 your determination?

19 MR. GOSLING: Objection.

20 You can answer.

21 A No.

22 MR. LORD: I just wanted
23 to clarify.

24 BY MR. LORD:

25 Q So, you said that Mr.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 Williams refused the blood test
3 request by the IDTU technician,
4 correct, you said that happened?

5 A What was that? Sorry.

6 Q I'm just trying to get back
7 to the time frame. You said that
8 Mr. Williams refused to take a
9 blood test when he was asked by
10 the IDTU technician?

11 A Yes. And he also refused
12 questions.

13 Q What happened after that?

14 A After that he was discharged
15 by the Jacobi Hospital.

16 Q Was he ever evaluated by
17 doctors?

18 A In regards to what?

19 Q Well, did he complain of any
20 injuries?

21 A Yes.

22 Q Do you remember what
23 injuries he complained of?

24 A I don't recall exactly.

25 Q Was he evaluated by any

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 doctors for those injuries?

3 A Yes.

4 Q Do you know the result of
5 that evaluation?

6 A Well, he was discharged with
7 no injuries.

8 Q And how do you know he had
9 no injuries?

10 A The doctor has to fill out
11 medical treatment form about what
12 were the results.

13 Q And the doctor filled out
14 the medical treatment form?

15 A Yes, his part.

16 Q So, what happened after the
17 doctor said he could be
18 discharged?

19 A He was transported back to
20 the precinct.

21 Q And how long did that take?

22 A I'm not sure.

23 Q What happened when he
24 arrived at the precinct?

25 A When he arrived at the

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 precinct, he was lodged into a
3 prisoner cell and I started my
4 arrest paperwork.

5 Q When he was locked in the
6 cell, was he still showing signs
7 of intoxication?

8 A I'm not sure. I wasn't
9 there the whole time.

10 Q While you were there, was
11 he?

12 A Yes, he had bloodshot eyes.

13 Q Was there anything else?

14 A Not that I can recall.

15 Q What happened after he was
16 placed in the cell?

17 A I started my arrest
18 paperwork.

19 Q How long did that take?

20 A I'm not sure of the specific
21 time.

22 Q What happened after you did
23 your arrest paperwork?

24 A I tidied up all the
25 paperwork, I sent it to the DA.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 I can't recall what time I
3 finished.

4 Q And what happened after you
5 sent it to the District Attorney?

6 A I'm not sure.

7 Q Did there ever come a time
8 when you talked to a member from
9 the Bronx District Attorney's
10 office?

11 A Yes.

12 Q And do you remember when
13 that was?

14 A I believe it was the next
15 day in the morning.

16 Q And when you had that
17 conversation, was Mr. Williams
18 still incarcerated?

19 A I'm not sure.

20 Q What was the content of that
21 conversation?

22 A What do you mean? Which
23 conversation?

24 Q The conversation with the DA
25 or ADA.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 A With the ADA, basically I
3 told her, well, my part, what I
4 observed and what happened of the
5 case. We tried to get in touch
6 with the victim of the other
7 vehicle. He didn't want to
8 answer any questions due to the
9 fact that he thought that we were
10 the male in the Christmas
11 sweater. He thought that we were
12 the other driver's attorney, so
13 he refused to answer any
14 questions.

15 Q Why would he think you were
16 the other driver's attorney?

17 MR. GOSLING: Objection.

18 You can answer.

19 A Because he was on scene. I
20 don't know if they had a
21 conversation or something.

22 BY MR. LORD:

23 Q Well, did you tell him that
24 you were in the New York City
25 Police Department?

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 A I wasn't on the phone. It
3 was the ADA.

4 Q Do you know if the ADA told
5 him she was a representative from
6 the Bronx County District
7 Attorney's office?

8 MR. GOSLING: Objection.
9 You can answer.

10 A Yes, but he still didn't
11 believe us.

12 BY MR. LORD:

13 Q What is your basis for
14 saying that he didn't believe
15 you?

16 A Because he said that he
17 didn't believe us, that he
18 thought we were the other guy's
19 attorney.

20 Q What did she tell him when
21 she spoke with him?

22 MR. GOSLING: Objection.

23 Mr. Hernandez, just let me
24 object and then you can answer.

25 Objection.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 You can answer.

3 A I don't recall exactly what
4 she told him.

5 BY MR. LORD:

6 Q Were you on the line for
7 this conversation?

8 A Yes. It was on speaker.

9 Q So, why would he think that
10 you were Mr. Williams' attorney?

11 MR. GOSLING: Objection.

12 You can answer.

13 A Well, the attorney was on
14 scene. Like I said, I don't know
15 if they had a conversation or
16 something.

17 BY MR. LORD:

18 Q So, what exactly did he say
19 when he said he wasn't going to
20 talk to you?

21 A I don't remember exactly
22 what he said.

23 MR. GOSLING: Just for the
24 record, just so we're clear,
25 when you are referring to "he",

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 can you specify who you are
3 talking about.

4 MR. LORD: The driver of
5 the other vehicle.

6 BY MR. LORD:

7 Q So, was there anything else
8 in that conversation besides what
9 you just mentioned?

10 A Not that I recall.

11 Q And what did the ADA say to
12 you after that conversation took
13 place?

14 A She told me that she was
15 going to go speak to her
16 supervisor.

17 Q Then what happened after
18 that?

19 A She decided to decline
20 prosecution.

21 Q Do you know why she decided
22 to decline prosecution?

23 A Because the driver of the
24 vehicle didn't want to talk about
25 what happened.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 Q And it was your
3 understanding that they needed
4 the driver to commence the
5 prosecution?

6 MR. GOSLING: Objection.
7 He is not a district
8 attorney.

9 So to the extent that you
10 know what conversations were
11 had, you can answer.

12 But note for the record he
13 is not a lawyer. He is not an
14 assistant district attorney.

15 MR. LORD: I'm talking
16 about the conversation they may
17 have had. Maybe she explained
18 it to him.

19 A No, not that I recall.

20 BY MR. LORD:

21 Q So, the ADA never explained
22 to you why they were deciding to
23 decline to prosecute?

24 MR. GOSLING: Objection.
25 You can answer.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 A She told me that because the
3 driver of the other vehicle
4 didn't want to say anything about
5 what happened.

6 BY MR. LORD:

7 Q So, that was the only reason
8 that she gave you?

9 A To my understanding, yes.

10 Q And what happened after she
11 gave you that reason? What did
12 you do next?

13 MR. GOSLING: Objection.

14 You can answer.

15 A Nothing. I went back to the
16 precinct. I just waited for the
17 decline prosecution paperwork.

18 BY MR. LORD:

19 Q And what happened after you
20 received the decline to prosecute
21 paperwork?

22 A I don't recall.

23 Q Was Mr. Williams ever
24 released?

25 A Yes.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 Q Do you know when he was
3 released?

4 A I don't recall.

5 Q Is there anything else that
6 you did on this case prior to
7 receiving the decline to
8 prosecute paperwork?

9 A I don't recall.

10 Q Is there anything you did on
11 this case after receiving the
12 decline to prosecute paperwork?

13 A I don't recall.

14 Q Is there anything else you
15 did on this case after the
16 conversation with the ADA?

17 A I don't recall.

18 Q Did you receive overtime as
19 a result of this arrest?

20 MR. GOSLING: Objection.

21 You can answer.

22 A Yes.

23 BY MR. LORD:

24 Q How much overtime did you
25 receive?

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 A I don't recall.

3 Q You filled out a memo book
4 in relation to this arrest,
5 correct?

6 A Correct.

7 MR. LORD: I'm going to
8 take a ten-minute break. Is
9 that okay?

10 MR. GOSLING: Yes, that's
11 fine. So just what time did
12 you want to come back on?

13 MR. LORD: Let's do 12:25.

14 MR. GOSLING: Okay.

15 * * * * *

16 (At which time, a brief
17 recess was held until 12:25
18 p.m.)

19 * * * * *

20 BY MR. LORD:

21 Q So, Officer Hernandez, you
22 said earlier that your partner at
23 some point informed you what the
24 other driver said who was not Mr.
25 Williams.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 MR. LORD: I will

3 rephrase.

4 BY MR. LORD:

5 Q At some point your partner

6 told you what the other driver

7 said to him, your partner?

8 MR. GOSLING: Objection.

9 You can answer.

10 A Yes.

11 BY MR. LORD:

12 Q By "other driver", I mean

13 the driver who was not Mr.

14 Williams, okay?

15 A Yes.

16 Q What was the content of that

17 statement?

18 A He told me that the other

19 driver told him that he was hit

20 from the back and that -- I don't

21 know exactly the exact words that

22 he said, but it was something

23 along the lines that the other

24 driver said that Mr. Williams

25 came out of the vehicle and

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 appeared to be intox'd and that
3 he had a video of it.

4 Q So, that's what you said
5 your partner told you?

6 A I'm saying it's not exactly
7 the words that he said, but along
8 those lines, that's what I
9 understood.

10 Q When you say you understood,
11 is that because he used the word
12 "intoxication"?

13 MR. GOSLING: Objection.
14 Clarify who you are
15 referring to for me.

16 BY MR. LORD:

17 Q When your partner told you
18 this is what the other driver
19 said, he the used the word
20 "intoxication"?

21 A Yes.

22 Q So, I'm currently showing
23 what has been Bates stamped as
24 Defendant's 00001, D_00001 to
25 Bates number D_00003.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 MR. GOSLING: Just to
3 clarify two things; one, are
4 you going to be entering this
5 in as an exhibit?

6 MR. LORD: Yes.

7 MR. GOSLING: And the
8 second, I would like my client
9 to have an opportunity to
10 review the document in its
11 entirety before answering any
12 questions.

13 MR. LORD: That's
14 perfectly reasonable.

15 So what I'm going to do is
16 I'm going to give Officer
17 Hernandez an opportunity to
18 review.

19 Q I will slowly scroll down.

20 I want you to tell me when
21 you want me to scroll down and
22 then I can stop and zoom in or
23 zoom out, depending on what your
24 needs are.

25 (At which time, counsel

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 scrolled through the exhibit
3 for the witness and all
4 parties.)

5 BY MR. LORD:

6 Q So, Officer, can you review
7 this part of the document?

8 A Yes.

9 Q Can you see it properly?

10 A Yes.

11 Q So, I'm going to scroll it
12 down now.

13 (At which time, counsel
14 scrolled through the exhibit
15 as requested for the witness
16 and all parties.)

17 BY MR. LORD:

18 Q Is that okay?

19 A Okay.

20 MR. GOSLING: Let's stop
21 it here.

22 Officer Hernandez, just
23 read and review this document
24 and let us know when you are
25 finished doing that.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 THE WITNESS: Okay.

3 A (Brief pause in proceedings
4 as witness reviews document.)

5 Scroll down.

6 (At which time, counsel
7 scrolled through the exhibit
8 as requested for the witness
9 and all parties.)

10 BY MR. LORD:

11 Q I'm going to stop right
12 here.

13 A Okay.
14 Scroll down.

15 (At which time, counsel
16 scrolled through the exhibit
17 as requested for the witness
18 and all parties.)

19 BY MR. LORD:

20 Q So, this is the last page.
21 We'll go to the end and go back
22 up.

23 A Okay.

24 (At which time, counsel
25 scrolled through the exhibit

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 as indicated for the witness
3 and all parties.)

4 MR. LORD: So I will have
5 this marked for identification
6 as Plaintiff's 1.

7 * * * * *

8 (Police Accident Report
9 MV-104AN, Bates stamped
10 D_00001 to D_00003,
11 consisting of 3 pages, was
12 marked as Plaintiff's
13 Exhibit 1 for identification
14 as of this date by the Court
15 Reporter; Attached hereto.)

16 * * * * *

17 MR. GOSLING: You are
18 marking it as an exhibit, as
19 Plaintiff's 1?

20 MR. LORD: Yes.

21 BY MR. LORD:

22 Q Can you identify this
23 document, Officer Hernandez?

24 A What do you mean "identify"?

25 Q What is this document?

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 A It is a police accident
3 report.

4 Q Did you fill this document
5 out?

6 A Yes.

7 Q Do you remember when you
8 filled this document out?

9 A I don't remember exactly the
10 time and date that I filled it
11 out though.

12 Q Is it part of your duties to
13 fill out accident report
14 documents?

15 A When there is a vehicle
16 accident involved, yes.

17 Q You have Vehicle 1 is the
18 vehicle driven by Mr. Williams?

19 A Yes, that's what it says
20 there.

21 Q And Vehicle 2 is the vehicle
22 driven by the other individual,
23 whose name is Carlos Jimenez?

24 MR. GOSLING: Just so the
25 record is clear, you are

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 referring to Vehicle 1 and
3 Vehicle 2 as it is written in
4 the police accident report?

5 THE WITNESS: Yes.

6 BY MR. LORD:

7 Q How did you get this
8 pedigree information from Mr.
9 Williams?

10 A I don't recall exactly how I
11 got it or when I got it.

12 MR. LORD: So, I'm going
13 to the bottom of what has been
14 marked as Bates D_00001.

15 (At which time, counsel
16 scrolled through the exhibit
17 as indicated for the witness
18 and all parties.)

19 BY MR. LORD:

20 Q I want to direct your
21 attention to the "Accident
22 Description/Officer's Notes"
23 section.

24 Did you write this section?

25 A I did.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 Q And when you wrote this
3 section, how did you come about
4 the information that you put into
5 it? Did someone tell this stuff
6 to you?

7 MR. GOSLING: Objection.
8 You can answer.

9 A Yes.

10 BY MR. LORD:

11 Q Who told you the facts of
12 the accident?

13 A So, my partner spoke to the
14 other driver, so he knows what
15 side of the story the other
16 driver had, and the other driver
17 obviously didn't want to say
18 anything, so we didn't have a
19 story for him.

20 Q So, where you wrote in the
21 second sentence, Vehicle 1
22 refused --

23 MR. GOSLING: There is
24 background noise so it's kind
25 of hard to hear.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 Is anyone else hearing
3 that? It's on your end because
4 it seems to be like --

5 MR. LORD: Yes, it is. If
6 it happens again, let me know.

7 MR. GOSLING: I think it's
8 better.

9 BY MR. LORD:

10 Q (Reading from Document)
11 So, the second sentence
12 says, Vehicle 1 driver --

13 MR. GOSLING: Again.

14 MR. LORD: I'm going to
15 switch microphones.

16 Is that any better?

17 MR. GOSLING: Try talking
18 a little bit longer. Just say
19 "testing".

20 MR. LORD: Testing, 1-2-3.
21 Can you hear me?

22 MR. GOSLING: It's there,
23 but it's not as loud so it's
24 fine.

25 You can try. We'll let

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 you know.

3 MR. LORD: Can you hear me
4 now?

5 MR. GOSLING: Yes.

6 MR. LORD: I'm going to
7 stop using my headphones.

8 MR. GOSLING: It's back.

9 BY MR. LORD:

10 Q So the second sentence,
11 "Vehicle 1 driver refused
12 statement regarding accident."

13 Did I read that --

14 That's actually one whole
15 section.

16 "At T/P/O vehicle accident
17 occurred involving two vehicles,
18 Vehicle 1 driver refused
19 statement regarding accident."

20 Did I read that correctly?

21 A Correct.

22 Q That's because you are
23 saying that Mr. Williams refused
24 to give a statement regarding the
25 accident?

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 A That's correct.

3 Q (Reading from Document)

4 "Vehicle driver 2", and I'm
5 reading from the next sentence,
6 "stated as he was driving
7 southbound on Bronx River Parkway
8 in the middle lane when Vehicle 1
9 impacted the rear of Vehicle 2."

10 Did I read that sentence
11 correctly?

12 A Correct.

13 Q And that was what was told
14 to you by your partner?

15 A Correct.

16 Q (Reading from Document)

17 Next sentence, "Vehicle 2
18 driver RMA on scene."

19 Did I read that correctly?

20 A Correct.

21 Q That "RMA" means that he
22 refused medical attention?

23 A Correct.

24 Q (Reading from Document)

25 "Vehicle 1 driver taken to

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 Jacobi Hospital for back and neck
3 pain, Vehicle 1 driver arrested
4 for suspicion of DWI."

5 Did I read that sentence
6 correctly?

7 A Correct.

8 Q So, you were told by Mr.
9 Williams that he had back and
10 neck pain?

11 A I don't recall.

12 Q Was it your partner who told
13 you that Mr. Williams had back
14 and neck pain?

15 A I don't recall exactly.

16 Q Now, "Vehicle 1 driver
17 arrested for suspicion of DWI."
18 What do you mean by suspicion of
19 DWI?

20 A Suspicion due to the fact
21 that we had suspected of him
22 driving DWI by the facts I said
23 earlier.

24 Q So, what is the difference
25 between being arrested for

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 suspicion of DWI and DWI?

3 MR. GOSLING: Objection.

4 You can answer.

5 A What do you mean?

6 BY MR. LORD:

7 Q So when you say, "suspicion
8 of DWI," does that mean that you
9 are not sure whether or not it
10 was a DWI?

11 MR. GOSLING: Objection.

12 You can answer.

13 A Well, we had reasonable
14 suspicion that he was driving
15 under the influence, yes.

16 MR. GOSLING: Before you
17 continue, there is more
18 feedback coming, and now it's
19 coming from when I speak. I
20 don't know if it's someone --

21 I don't know if it's
22 coming from someone's speaker
23 that it's like when we talk
24 it's just coming into the --
25

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 BY MR. LORD:

3 Q Officer Hernandez, if you
4 can't understand something that's
5 being said, please let me know
6 and I will have no problem
7 repeating it.

8 A Okay.

9 Q So, when you arrest someone
10 for DWI, you put suspicion of DWI
11 or you just say I arrest them for
12 DWI?

13 MR. GOSLING: Objection.

14 You can answer.

15 A What do you mean?

16 BY MR. LORD:

17 Q Well, you said, suspicion of
18 DWI, correct?

19 A Yes.

20 Q Does that have an
21 independent meaning or is that
22 just standard language?

23 A I'm sorry, I couldn't hear
24 the last word you said.

25 Q Does that have an

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 independent meaning or is that
3 the standard language that you
4 use?

5 MR. GOSLING: Objection.

6 You can answer.

7 A That's just the standard
8 language that I use.

9 BY MR. LORD:

10 Q So when you say, "suspicion
11 of DWI," you just mean he was
12 arrested for DWI?

13 MR. GOSLING: Objection.

14 You can answer.

15 A Well, at the time it was
16 arrested for suspicion of DWI.

17 BY MR. LORD:

18 Q Is that different from being
19 arrested for DWI?

20 MR. GOSLING: Objection.

21 You can answer.

22 A I'm not sure.

23 BY MR. LORD:

24 Q So, is there a distinction
25 between being arrested for

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 suspicion of DWI versus being
3 arrested for DWI?

4 A Yes.

5 Q What is the difference?

6 A Well, I don't know. I'm
7 guessing because you are the one
8 asking the question.

9 Q I don't want you to guess.
10 Based on what you wrote, is there
11 a difference?

12 A No.

13 Q Okay. Now, there is nothing
14 in here about Vehicle 2, Driver 2
15 stating that he thought the
16 driver of Vehicle 1 was
17 intoxicated, correct?

18 A What was that? Sorry.

19 Q There was nothing in this
20 accident description where
21 Vehicle Driver 2 stated that
22 Vehicle Driver 1 was intoxicated?

23 A Not in the accident report,
24 no.

25 Q Why did you not put that in

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 the report?

3 A I don't recall.

4 MR. LORD: So, I will stop
5 sharing at this stage and we'll
6 be opening another document.

7 (At which time, there
8 was a brief pause in the
9 proceedings.)

10 MR. LORD: I would like
11 this exhibit to be marked as
12 Plaintiff's 2.

13 * * * * *

14 (NYPDPETS Property and
15 Evidence Tracking System
16 Property Clerk Invoice,
17 Invoice No. 2000930421,
18 Invoice Date 12/15/2019,
19 Bates stamped D_00004 to
20 D_00006, consisting of 3
21 pages, was marked as
22 Plaintiff's Exhibit 2 for
23 identification as of this
24 date by the Court Reporter;
25 Attached hereto.)

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 * * * * *

3 MR. LORD: This is, for
4 the record, Bates stamped
5 D_00004 to D_00006.

6 BY MR. LORD:

7 Q So, I'm going to zoom out a
8 little bit, give you the
9 opportunity to review this
10 document.

11 Mr. Hernandez, as before,
12 please review. Once you have
13 reviewed a section, I will scroll
14 down until you have had an
15 opportunity to review every
16 section of the document in its
17 entirety.

18 Please start reviewing. If
19 you need me to zoom some in at
20 any point, please let me know as
21 well.

22 A (Brief pause in proceedings
23 as witness reviews document.)

24 Okay.

25 Q I can scroll down?

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 A Yes.

3 (At which time, counsel
4 screen shared the exhibit
5 with the witness and all
6 parties.)

7 MR. GOSLING: One second.

8 Okay. Just stop right
9 there. I'm good whenever
10 Officer Hernandez is.

11 THE WITNESS: Okay.

12 (At which time, counsel
13 scrolled through the exhibit
14 as requested for the witness
15 and all parties.)

16 MR. LORD: I'm going to
17 keep going down.

18 MR. GOSLING: That's good.
19 I'm good whenever Officer
20 Hernandez is.

21 THE WITNESS: I'm good.

22 MR. GOSLING: Stop right
23 there.

24 Go up a little bit. Up a
25 little bit more. Tiny bit

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 more.

3 I think that's good.

4 THE WITNESS: Okay.

5 MR. GOSLING: Okay. I'm
6 good.

7 MR. LORD: I'm going to
8 the end of the document. This
9 is the last page.

10 MR. GOSLING: That's fine.
11 Okay.

12 BY MR. LORD:

13 Q Officer Hernandez, have you
14 had an opportunity to review this
15 document?

16 A Yes.

17 Q I'm going to back to the
18 beginning, with the Bates number
19 ending in 4. Can you tell us
20 what this document is?

21 A That's NYPD Pets property
22 clerk invoice which is when we
23 voucher items.

24 Q And when do you fill out
25 these this document normally?

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 A At the precinct.

3 Q Why do you fill it out?

4 A We fill it out to keep track
5 of anything we voucher of the
6 other person's property.

7 Q Do you voucher Mr. Williams'
8 vehicle?

9 A Yes.

10 MR. GOSLING: Objection.

11 You can answer.

12 BY MR. LORD:

13 Q So, I want to direct your
14 attention to the vehicle detail
15 section, additional description.
16 It says, vehicle extremely
17 damaged prior to police contact,
18 all compartments are, and it
19 seems like it's cut off. Did I
20 read that accurately?

21 A Yes.

22 Q You said that the vehicle
23 was extremely damaged. What did
24 you mean by that?

25 A It was -- it had a lot of

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 damage.

3 Q And why did you put that in
4 the description?

5 A Because we have to describe
6 the vehicle, how it is when we
7 voucher it.

8 Q And to your knowledge was
9 this vehicle extremely damaged
10 due to the car accident?

11 MR. GOSLING: Objection.

12 Mr. Hernandez --

13 Objection.

14 You can answer. Just give
15 me an opportunity to raise
16 objections.

17 THE WITNESS: Yes.

18 MR. GOSLING: You can
19 answer, so just answer.

20 A Yes.

21 BY MR. LORD:

22 Q And to your knowledge was
23 Mr. Williams injured as a result
24 of this accident that resulted in
25 extreme damage to his vehicle?

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 MR. GOSLING: Objection.

3 You can answer.

4 A Not that I know of, no.

5 BY MR. LORD:

6 Q So, you had no idea about
7 how he may have gotten his
8 injuries?

9 A I didn't know if he had any
10 injuries.

11 Q Didn't you say earlier that
12 he complained of -- in the
13 accident report that he
14 complained of pain?

15 A Yes, pain, not that he was
16 actually injured.

17 Q So, you thought that his
18 complaints of pain were not
19 honest?

20 MR. GOSLING: Objection.

21 Mischaracterization. You
22 can answer.

23 A That's not what I'm saying.
24 What I'm saying that pain and
25 actually being injured is two

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 different things.

3 BY MR. LORD:

4 Q What is the difference
5 between being in pain and being
6 injured?

7 MR. GOSLING: He is not a
8 doctor. He is a police
9 officer.

10 You can answer.

11 Objection. You can answer.

12 A Being in pain is like having
13 -- I don't know how much pain he
14 was having compared to my
15 understanding of injured is
16 having, like, you know, everybody
17 has different understandings of
18 injuries, so to me, my
19 understanding is like having a
20 broken leg or something some sort
21 like that.

22 BY MR. LORD:

23 Q So, when you write that
24 someone is not injured in the
25 report, you mean they don't have

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 something along the lines of a
3 broken leg?

4 MR. GOSLING: Objection.

5 You can answer.

6 A That's not what I'm saying.
7 What I'm saying is I did not know
8 at the time that he had an
9 injury. I just knew what he told
10 me, which was that he had pain.

11 BY MR. LORD:

12 Q Okay. So, what would make
13 his pain into an injury based on
14 how you conduct reports?

15 MR. GOSLING: Again, he is
16 not a doctor.

17 MR. LORD: He is writing
18 these statements in the
19 reports. I'm trying to figure
20 out --

21 MR. GOSLING: Referring to
22 any statements that were
23 written and what those mean I
24 will allow, but to the extent
25 that you are asking him if he

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 was injured --

3 BY MR. LORD:

4 Q I'm not asking for a
5 professional medical opinion.
6 I'm asking you in terms of when
7 you fill out reports and you talk
8 about injuries, how you are
9 categorizing something as injured
10 versus somebody being in pain.
11 What do you mean by that
12 distinction?

13 A Like I said, he just told me
14 he was in pain, so that's what I
15 wrote.

16 MR. LORD: So, I'm going
17 to stop sharing this. I will
18 be doing another document.

19 (At which time, counsel
20 screen shared the exhibit
21 with the witness and all
22 parties.)

23 MR. LORD: So, I am
24 sharing what has been marked
25 for identification as D_00016.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 MR. GOSLING: So you are
3 going to be entering, as
4 Exhibit 3, the NYPD accident
5 report?

6 MR. LORD: I'm going to do
7 something else. I'm going to
8 do another report.

9 MR. GOSLING: I'm sorry?

10 MR. LORD: I'm going to do
11 another report for Exhibit 3.

12 MR. GOSLING: What is
13 that?

14 (At which time, counsel
15 screen shared the exhibit
16 with the witness and all
17 parties.)

18 MR. LORD: That should be
19 what I'm sharing right now.
20 It's the arresting officers
21 report, intoxicated driver
22 arrest.

23 * * * * *

24 (Arresting Officer's
25 Report- Intoxicated Driver

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 Arrest, PD 271-152, IDTU

3 Case No. 19-B-BX-116, Bates

4 stamped D_00023 to D_00026,

5 consisting of 4 pages was

6 marked as Plaintiff's

7 Exhibit 3 for identification

8 as of this date by counsel;

9 Attached hereto.)

10 * * * * *

11 MR. LORD: This is the

12 intoxicated driver arrest

13 report, Bates number D_00023

14 all the way to D_00026.

15 BY MR. LORD:

16 Q So I just marked Plaintiff's

17 3. As before, Officer Hernandez,

18 I'm going to give you an

19 opportunity to review this

20 document. If you need additional

21 time, please let me know and I'm

22 going to zoom out and I'm going

23 to scroll down and give you an

24 opportunity to review all the

25 sections. So we'll start here.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 A (Brief pause in proceedings
3 as witness reviews document.)

4 MR. GOSLING: I think
5 leave the zoom to read.

6 MR. LORD: I'm going to
7 leave this up as long as you
8 need it. Just let me know.

9 MR. GOSLING: Okay. Can
10 you go back up a little. Right
11 there.

12 (At which time, counsel
13 scrolled through the exhibit
14 as requested for the witness
15 and all parties.)

16 THE WITNESS: Okay.

17 MR. LORD: So I'm
18 scrolling down.

19 (At which time, counsel
20 scrolled through the exhibit
21 as indicated for the witness
22 and all parties.)

23 THE WITNESS: That's good.

24 MR. GOSLING: Okay.

25 THE WITNESS: Okay.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 MR. LORD: I'm going to
3 scroll down here.

4 (At which time, counsel
5 scrolled through the exhibit
6 as indicated for the witness
7 and all parties.)

8 THE WITNESS: Okay.

9 MR. LORD: So, this is a
10 little dark.

11 THE WITNESS: Okay.

12 MR. LORD: Scrolling down
13 some more. Scrolling down some
14 more.

15 THE WITNESS: Okay.

16 MR. LORD: I'm scrolling
17 down again.

18 THE WITNESS: Okay.

19 MR. LORD: And this is the
20 last page.

21 THE WITNESS: Okay.

22 BY MR. LORD:

23 Q Now, Officer Hernandez, did
24 you get an opportunity to review
25 this document?

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 A Yes.

3 Q What is this document?

4 A It's the arresting officer's
5 report for intoxicated driver
6 arrest.

7 Q And did you fill out this
8 report?

9 A Yes, I did.

10 Q Why did you fill out this
11 report?

12 A As part of the -- one of the
13 worksheets that we need to fill
14 out when suspected of DWI.

15 Q I want to direct your
16 attention to the arresting
17 officers's observation at the
18 time of arrest. This is the
19 breath section, odor of alcoholic
20 beverages. What did you mark?

21 A Moderate.

22 Q That means it wasn't faint,
23 it wasn't strong and it wasn't
24 none, according to your
25 observation?

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 A Correct.

3 Q The next section is color of
4 face. What was the color of
5 face?

6 A It says there, normal.

7 Q So, the observation is that
8 his face had a normal color?

9 A Correct.

10 Q So, the next category is
11 clothes. What is the condition
12 of his clothes?

13 A It's checked there, orderly.

14 Q That means they weren't
15 disarranged, disorderly or
16 soiled, correct?

17 A Correct.

18 Q His attitude, what did you
19 mark for his attitude?

20 A Cooperative.

21 Q That means he was not
22 uncooperative or combative or
23 talkative, correct?

24 A Correct.

25 Q So, the actions, we have

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 profanity, belching, vomiting,
3 hiccupping, fighting; all of
4 these are left blank, correct?

5 A Correct.

6 Q And those are left blank
7 because you did not observe any
8 of those things?

9 A Correct.

10 Q His eyes, what were the
11 condition of his eyes you say you
12 observed?

13 A Watery and bloodshot.

14 Q And his balance, what did
15 you say his balance was that you
16 observed?

17 A Swaying.

18 Q So, you are saying he wasn't
19 steady?

20 A Correct.

21 Q But he wasn't sagging?

22 A Correct.

23 Q And he wasn't falling?

24 A Correct.

25 Q What about his speech?

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 A I have marked there, clear.

3 Q And is that because you
4 observed his speech to be clear?

5 A From what I observed.

6 Q The section that says,
7 preliminary breath test, did you
8 mark no?

9 A Correct.

10 Q Why did you not request a
11 preliminary breath test?

12 A We did request. He refused
13 every test and question.

14 Q So, what is a preliminary
15 breath test?

16 A Well, I'm not sure what that
17 is. We don't conduct those.
18 Those would be conducted by IDTU.

19 Q So, your understanding is
20 that IDTU conducts preliminary
21 breath tests?

22 A Correct.

23 Q Now, I'm looking at now what
24 has been marked as ending 24,
25 Bates number. What does it say

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 right here what you wrote over
3 these series of questions?

4 A Refusal by attorney
5 Toussaint.

6 Q What does that mean?

7 A That means the attorney was
8 there present and he refused for
9 Garfield to answer any questions.

10 Q So, Attorney Toussaint is
11 the one who actually refused?

12 A Both of them refused.

13 Q So, why didn't you write
14 refused by Mr. Williams?

15 A Because the attorney was
16 there present saying that he
17 should not answer any questions
18 and refused tests.

19 Q Okay. So, I'm at looking
20 right now at what is ending Bates
21 number ending 25, and I will
22 direct your attention to -- Let
23 me ask you this question. Did
24 you fill out this refusal paper
25 or did the IDTU technician fill

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 this one out?

3 A Well, we have different
4 parts that we fill out.

5 Q What part do you fill out?

6 A The pedigree information.

7 Q So, that's the name up top,
8 this stuff in the top section?

9 A Yes, and some of the bottom
10 parts also as well.

11 Q So the Section B, who filled
12 that out?

13 A That's me. I filled that
14 out.

15 Q So, you said he has poor
16 stability on feet?

17 A Correct.

18 Q And you say he has an
19 alcohol beverage odor?

20 A Yes.

21 Q Is there a reason why you
22 didn't list the actual alcohol
23 beverage?

24 A How would I know the exact
25 odor of a beverage?

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 Q Do you do alcohols give off
3 different odors?

4 MR. GOSLING: Objection.

5 You can answer.

6 A To my understanding, yes.

7 BY MR. LORD:

8 Q So, are you able to identify
9 some of those odors is given off?

10 MR. GOSLING: Objection.

11 You can answer.

12 A What do you mean by that?

13 BY MR. LORD:

14 Q Could you identify it as
15 being beer versus vodka smell of
16 alcohol?

17 A No.

18 Q You are unable to do that or
19 you don't think that exists?

20 A I wouldn't be -- I don't
21 think I would be able to identify
22 a beer versus an alcohol
23 beverage.

24 MR. GOSLING: Objection.

25 Wait. Are we referring

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 to, like, the breath?

3 MR. LORD: Yes, the odor
4 of alcohol, identifying the
5 type of alcohol through the
6 odor.

7 MR. GOSLING: I
8 understand.

9 Sorry. Go ahead.

10 BY MR. LORD:

11 Q So, I'm now going to what is
12 Bates number ending 26. Again,
13 there is some more. There is
14 another section. What did you
15 write on the top of this section?

16 A Refusal by Attorney
17 Toussaint.

18 Q And what is the section
19 right here, it says conclusion of
20 IDTU technician, does it say
21 that?

22 A Yes.

23 Q "Is this subject under
24 influence of intoxicating
25 beverage/drugs? It says, yes,

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 no, other. What was marked down?

3 A I did not mark that. I
4 wouldn't be able to tell what
5 that said.

6 Q Can you tell what is marked
7 on this paper?

8 A There is a check on "other".

9 Q And is there any explanation
10 for "other"?

11 A I can't tell what that says.

12 Q If I said, unable to
13 determine, do you think it says
14 that or could say that?

15 A It could say that, yes.

16 Q You said you didn't fill
17 this out. Who filled out this
18 section?

19 A It says, completion of IDTU
20 technician, so, most likely he
21 filled it out.

22 Q What is an IDTU technician?

23 A IDTU technician is Highway
24 Patrol officer. They conduct the
25 blood test, Breathalyzer, vehicle

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 accident. That is their main
3 work. And also for in cases
4 every time there is a DWI, they
5 respond to the hospital and the
6 precinct.

7 Q So, if you are aware, do
8 IDTU technicians get additional
9 training?

10 MR. GOSLING: Objection.
11 You can answer. Whatever
12 you know.

13 A I'm not sure.

14 BY MR. LORD:

15 Q Well, to your knowledge,
16 does the IDTU technician have
17 training that you do not have?

18 MR. GOSLING: Objection.
19 You can answer to the
20 extent you know.

21 A I don't know.

22 BY MR. LORD:

23 Q Well, let me ask you this,
24 do you know how to give out
25 coordination tests for DWI?

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 MR. GOSLING: Objection.

3 You can answer.

4 A We don't get trained for
5 that.

6 BY MR. LORD:

7 Q Can an IDTU technician give
8 out coordination tests for DWI?

9 MR. GOSLING: Objection.

10 To the extent that you
11 know, you can answer.

12 A I would not know.

13 BY MR. LORD:

14 Q You do not know if IDTU
15 technicians is trained how to
16 give out coordination tests?

17 MR. GOSLING: Objection.

18 You can answer.

19 A I would not know.

20 BY MR. LORD:

21 Q Have you ever seen an IDTU
22 technician give out a
23 coordination test?

24 A I never seen it.

25 Q In the two other arrests

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 that you made for DWI, were
3 coordination tests given?

4 MR. GOSLING: Objection.
5 What is the relevance?

6 MR. LORD: That is not a
7 legitimate objection.

8 MR. GOSLING: You are
9 asking about other arrests.
10 You are asking about other
11 arrests. You are not asking
12 about this arrest.

13 To the extent you want to
14 ask about this arrest, but to
15 the extent that you are going
16 to ask about another arrest,
17 that could be privileged
18 information.

19 MR. LORD: Your argument
20 is that whether coordination
21 tests were given in another
22 arrest is privileged?

23 MR. GOSLING: Counsel, you
24 are asking him if he knows
25 whether or not the coordination

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 tests were conducted during
3 another arrests is not the
4 basis of that lawsuit. There
5 is no reason to be discussing
6 other DWI's or information
7 pertaining --

8 MR. LORD: He is saying he
9 has no knowledge. He said he
10 has no knowledge of whether
11 IDTU technicians can give out
12 coordination tests.

13 MR. GOSLING: He is not an
14 IDTU technician, so you are
15 asking, to the effect, that he
16 knows.

17 MR. LORD: Maybe you do
18 not know, but when a person is
19 arrested on DWI, they are taken
20 to a specific precinct and he
21 is present when these tests are
22 conducted.

23 MR. GOSLING: Counsel, I
24 think you can ask him questions
25 pertaining to this case. I

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 don't know if those other
3 incidents are pending, if those
4 criminal lawsuits are pending.
5 I'm not sure whether those
6 arrests have anything to do
7 with this case, so you are --
8 if you are asking him if he
9 observed, fine. I don't want
10 to get into details now.

11 MR. LORD: You are
12 instructing him not to answer
13 the question?

14 MR. GOSLING: I'm saying
15 he can answer the question
16 about what he observed, but I'm
17 instructing him to not answer
18 any questions concerning other
19 DWI's that do not concern this
20 lawsuit.

21 MR. LORD: He is not
22 allowed to answer any
23 observations that he may have
24 made of IDTU technicians in
25 other arrests?

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 MR. GOSLING: I'm saying
3 he can answer questions about
4 whether if he ever observed an
5 IDTU officer do a coordination
6 test, but I don't want him
7 giving any information about
8 that arrest or when the arrest
9 was. It's not relevant to this
10 lawsuit.

11 BY MR. LORD:

12 Q Officer, have you observed
13 an IDTU technician give
14 coordination tests?

15 MR. GOSLING: Objection.
16 You can answer.

17 A Not that I recall.

18 BY MR. LORD:

19 Q So, did an IDTU technician
20 inform you that he did not
21 believe that Mr. Williams was
22 under the influence of drugs or
23 alcohol?

24 A No, he did not inform me of
25 that.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 Q Did you ever ask him what
3 his conclusion was?

4 A No, I did not.

5 Q Did you get an opportunity
6 to review this paperwork?

7 A Yes, I did.

8 Q Is this paperwork forwarded
9 to the Bronx County District
10 Attorney's office?

11 A Yes, it is.

12 Q Is it your responsibility to
13 forward this paperwork?

14 A Yes, it is.

15 Q Do you review the paperwork
16 before you forward it to the
17 District Attorney's office?

18 A Yes, it is.

19 Q So, you would have reviewed
20 the section where it says that he
21 did not conclude that Mr.
22 Williams was intoxicated?

23 MR. GOSLING: Objection.

24 I think that is a
25 mischaracterization of what the

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 document actually says. It
3 says, "unable to determine."
4 But you can answer if you
5 know.

6 A I was going to say it does
7 not say that what you are saying.
8 It says, unable to determine.

9 BY MR. LORD:

10 Q Well, so there is a category
11 that says, yes, correct?

12 A Correct.

13 Q There is a category that
14 says, no, correct?

15 A Correct.

16 Q So, he did not mark the
17 "yes" category?

18 A And he did not mark the 'no'
19 category.

20 Q But you marked the "yes"
21 category previously, correct?

22 MR. GOSLING: Objection.
23 Can you refer to what you
24 are talking about?
25

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 BY MR. LORD:

3 Q So, I refer to -- this is
4 Bates ending 23. It says, "Is
5 subject under the influence of
6 Intoxicating Beverages/Drugs?"
7 You marked "yes," correct.

8 A Correct.

9 Q So, is it fair to say that
10 the IDTU technician disagreed
11 with your assessment?

12 MR. GOSLING: Objection.

13 You can answer.

14 A No.

15 BY MR. LORD:

16 Q Well, he had the opportunity
17 to mark "yes", correct?

18 A Correct.

19 Q And he chose not to mark
20 "yes"?

21 A Correct. As well he did not
22 mark "no".

23 Q If you had the "other" got
24 category, would you have marked
25 "other" as well?

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 A No.

3 Q As you stand here now, do
4 you agree with the determination
5 of "other"?

6 A I would not know what were
7 the basis for him to select that,
8 so I wouldn't know.

9 Q Do you agree with it?

10 A I cannot answer for him, so
11 I would not know.

12 Q I'm asking you do you agree
13 with that determination?

14 MR. GOSLING: Objection.

15 A No.

16 MR. GOSLING: You can
17 answer.

18 BY MR. LORD:

19 Q What was the answer, I'm
20 sorry?

21 A No.

22 MR. LORD: I'm stopping
23 sharing and we'll go to another
24 document.

25 MR. GOSLING: You need a

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 break or anything?

3 You are good, Officer

4 Hernandez?

5 THE WITNESS: I'm good.

6 BY MR. LORD:

7 Q So, we're on Exhibit 4.

8 MR. GOSLING: Are you
9 marking another exhibit?

10 MR. LORD: Yes.

11 MR. GOSLING: Just give me
12 one second, please.

13 (At which time, there
14 was a brief pause in the
15 proceedings.)

16 MR. GOSLING: What are we
17 marking for 4?

18 MR. LORD: I'm going to
19 share it right now.

20 (At which time, counsel
21 screen shared the exhibit
22 with the witness and all
23 parties.)

24 MR. LORD: Okay. So, I'm
25 looking at what has been marked

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 as Bates number D_00050 to

3 Bates number D_000051.

4 I would like this exhibit
5 marked as Plaintiff's 4, and
6 this is the Affidavit of
7 Support of the
8 Declining/Deferring
9 Prosecution.

10 * * * * *

11 (Affidavit in Support
12 of Declining/Deferring
13 Prosecution, Arrest Date:
14 12/15/2019, Bates stamped
15 D_00050 to D_000051,
16 consisting of 2 pages was
17 marked as Plaintiff's
18 Exhibit 4 for identification
19 as of this date by the Court
20 Reporter; Attached hereto.)

21 * * * * *

22 BY MR. LORD:

23 Q So, I'm going to give you
24 the opportunity to review this
25 document, Officer Hernandez.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 You can let me know. Take
3 as long as you need.

4 A (Brief pause in proceedings
5 as witness reviews document.)

6 MR. GOSLING: You can move
7 down whenever he is ready.

8 THE WITNESS: I'm ready.

9 (At which time, counsel
10 scrolled through the exhibit
11 as requested for the witness
12 and all parties.)

13 MR. GOSLING: At the top
14 where it says, "Reason(s) for
15 Declining/Deferring
16 prosecution."

17 MR. LORD: I can move
18 down.

19 MR. GOSLING: Yes, that's
20 perfect.

21 A Okay.

22 BY MR. LORD:

23 Q Okay. And I'm going to
24 scroll all the way down to this
25 section. I believe this is the

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 end of the document, so you let
3 me know.

4 (At which time, counsel
5 scrolled through the exhibit
6 as indicated for the witness
7 and all parties.)

8 MR. GOSLING: That's fine.

9 A Okay.

10 BY MR. LORD:

11 Q So, Officer Hernandez, what
12 is this document?

13 A That's the affidavit.

14 Q Okay. And what do you mean,
15 "affidavit"? Affidavit for what?

16 A For the case.

17 Q What does this affidavit do?
18 What is the significance of it?

19 MR. GOSLING: I would like
20 to note my objection.

21 This document is not
22 prepared by the officer, at
23 least I don't believe it's
24 prepared by the officer. It's
25 a document prepared by the

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 district attorney's office.

3 To the extent you know
4 about this document, but it's
5 not prepared by him.

6 A As far as I know, it's an
7 affidavit about, basically, the
8 case.

9 BY MR. LORD:

10 Q And you said you received
11 this document earlier?

12 A Correct.

13 Q And you received this
14 document after you had spoken
15 with the ADA?

16 A Correct.

17 Q (Reading from Document)
18 Now, I'm in "Category for
19 Declining/Deferring prosecution:"
20 "The People do not have
21 sufficient evidence to prove the
22 defendant committed the crime(s)
23 charged beyond a reasonable
24 doubt."

25 Do you remember reading this

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 section I'm highlighting?

3 A Yes.

4 Q And what did you think of
5 this when you read it?

6 MR. GOSLING: Objection.

7 You can answer.

8 A That? I didn't think
9 anything.

10 BY MR. LORD:

11 Q Do you agree with that?

12 A No.

13 Q What do you disagree on?

14 MR. GOSLING: Objection.

15 I mean, Counsel, this is a
16 DA document. He is not a
17 lawyer. It's about a standard
18 of beyond a reasonable doubt.
19 This is beyond the scope of
20 what he knows. He doesn't
21 prosecute cases. He is a
22 police officer.

23 If you know, you can
24 answer.

25 MR. LORD: Malicious

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 prosecution is a standard that
3 applies to officers as well.
4 Officers are trained in terms
5 of what probable cause is and
6 they are trained in lawsuits
7 and other things.

8 MR. GOSLING: Counsel,
9 there is a clear difference
10 between a standard of what
11 probable cause is and whether
12 what proving a case beyond a
13 reasonable doubt is.

14 You are asking our client
15 here. Police Officer Hernandez
16 is not a district attorney. He
17 does not prosecute cases in the
18 Bronx. This document was not
19 completed by him, so you are
20 asking him to describe a
21 statement about why the DA
22 could not prove their case
23 beyond a reasonable doubt and
24 asking his opinion about it.
25 There is no basis to know that

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 he knows what beyond a
3 reasonable doubt and all of
4 that is. That's why I said,
5 "to the extent that you know."

6 MR. LORD: I'm asking his
7 opinion. I'm allowed to
8 present him with any document
9 and ask his opinion.

10 MR. GOSLING: You can ask
11 his opinion, but you are
12 assuming that he knows what
13 "beyond a reasonable doubt"
14 means.

15 MR. LORD: Counsel, I'm
16 not assuming anything. I'm
17 asking a question. I'm not
18 assuming any facts not in
19 evidence. This is a document
20 that he received, that he
21 reviewed. I'm asking his
22 opinion about the words in the
23 document. That is all I'm
24 doing.

25 MR. GOSLING: That's fine.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 You can ask his opinion about
3 it.

4 BY MR. LORD:

5 Q (Reading from Document)
6 What is your opinion about
7 the statement that "The People do
8 not have sufficient evidence to
9 prove the defendant committed the
10 crime(s) charged beyond a
11 reasonable doubt"?

12 A I don't agree with it.

13 Q Why don't you agree with it?

14 A Because the only reason they
15 declined to prosecute was because
16 they can't get in touch with the
17 other driver.

18 Q And why do you think that's
19 not enough?

20 MR. GOSLING: Objection.
21 You can answer about your
22 opinion.

23 A That's my opinion.

24 BY MR. LORD:

25 Q (Reading from Document)

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 It says -- I'm going to the
3 third paragraph, the second
4 sentence -- "The Arresting
5 Officer was unable to speak with
6 the first officer to arrive on
7 the scene, Detective Leon from
8 ESU (Shield #4232) to determine
9 if Detective Leon observed the
10 Defendant operating a motor
11 vehicle or if the Defendant made
12 any statements to Detective
13 Leon."

14 Is this an accurate
15 statement?

16 A That's what's written there,
17 yes.

18 Q So, is that statement true?

19 A Well, they tried calling the
20 officer since the driver of the
21 other vehicle was not picking up
22 anymore calls.

23 Q Okay. And is this statement
24 true, that you were unable to
25 speak with him when he arrived on

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 the scene to ask him these
3 questions?

4 A It's saying I wasn't able to
5 speak with him while I was with
6 the ADA.

7 MR. GOSLING: Counsel, can
8 we clarify when you are
9 referring to "him", who you are
10 referring to.

11 MR. LORD: Detective Leon.

12 Q (Reading from Document)

13 I'm reading --

14 I'm going to read that
15 partial sentence.

16 It says, "The Arresting
17 Officer was unable to speak with
18 the first officer to arrive on
19 the scene."

20 So that means that you were
21 unable to speak with him at the
22 time that you were determining
23 whether to prosecute?

24 MR. GOSLING: Again, when
25 you are referring to "him" you

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 are referring to?

3 MR. LORD: Detective Leon.

4 A Yes. While I was speaking
5 with the ADA, they tried to call
6 that officer to see what were his
7 view or what happened, whether he
8 saw, and we couldn't get in touch
9 with him either; that's what
10 that's saying.

11 BY MR. LORD:

12 Q Is there a way that police
13 officers communicate with each
14 other? You have a cell phone?

15 MR. GOSLING: Objection.

16 You can answer.

17 A I looked up his cell phone.

18 BY MR. LORD:

19 Q And you called his cell
20 phone and he didn't pick up, is
21 that what happened?

22 A Correct; his department cell
23 phone.

24 Q Is there a reason why you
25 couldn't call the next day?

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 MR. GOSLING: Objection.

3 You can answer if you

4 know.

5 A I don't know. I just was
6 calling at that time with the ADA
7 that was next to me.

8 BY MR. LORD:

9 Q At any point did you tell
10 the ADA to give you time to reach
11 out to contact Detective Leon?

12 MR. GOSLING: Objection.

13 You can answer.

14 A No.

15 BY MR. LORD:

16 Q I'm reading from the second
17 paragraph, four sentences down.

18 So I'm going to start
19 with --

20 MR. GOSLING: You are
21 saying four "sentences." For
22 the record, it's four lines.

23 MR. LORD: Four lines.

24 MR. GOSLING: I think it's
25 actually the third sentence.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 MR. LORD: It's actually
3 the second sentence. It's a
4 long sentence.

5 MR. GOSLING: It's the
6 third.

7 MR. LORD: I'm starting
8 with the third.

9 MR. GOSLING: It's the
10 third sentence, yes.

11 BY MR. LORD:

12 Q (Reading from Document)
13 So, I'm reading now,
14 "Further, the Complainant would
15 not pick up any further calls
16 from NYPD or the District
17 Attorney's office."

18 Did I read that accurately?

19 A Yes.

20 Q You said earlier that he
21 thought that you guys were
22 Mr. Williams' attorney, correct?

23 MR. GOSLING: Objection.

24 BY MR. LORD:

25 Q You said that earlier?

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 MR. GOSLING: Said what,
3 Counsel?

4 MR. LORD: He said that
5 this individual, Carlos
6 Jimenez, thought that they were
7 Mr. Williams' attorney when
8 they called.

9 MR. GOSLING: You can
10 answer.

11 A Correct.

12 BY MR. LORD:

13 Q So, when you spoke with him,
14 did you identify yourselves as a
15 member of the Bronx District
16 Attorney's office and New York
17 Police Department?

18 A Correct.

19 Q And you are saying he didn't
20 believe you, he thought you were
21 lying?

22 A Correct.

23 MR. LORD: I'm going to
24 stop sharing here.

25 MR. GOSLING: Are we

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 putting in a 5?

3 MR. LORD: Yes.

4 MR. GOSLING: What is 5?

5 MR. LORD: 5 is going to
6 be a body cam video.

7 MR. GOSLING: Can you
8 specify which body camera
9 video?

10 MR. LORD: It's a body cam
11 video. The label is
12 AXON_BODY_2_VIDEO
13 DEO_2019-12-15_0034.

14 MR. GOSLING: Can you just
15 read that back for me, please.

16 (At which time, the
17 requested portion of
18 colloquy was read back by
19 the stenographer.)

20 * * * * *

21 (Body cam video labeled
22 AXON_BODY_2_VIDEO
23 DEO_2019-12-15_0034 was
24 marked as Plaintiff's
25 Exhibit 5 for identification

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 as of this date by the Court
3 Reporter; retained by
4 counsel.)

5 * * * * *

6 MR. LORD: So, I'm going
7 to attempt to share.

8 (At which time, counsel
9 screen shared the exhibit
10 with the witness and all
11 parties.)

12 MR. GOSLING: Are you
13 going to be asking any
14 questions about audio
15 pertaining to the video?

16 MR. LORD: No. No audio.

17 MR. GOSLING: Because of
18 technology.

19 MR. LORD: So, I'm
20 starting at 0:00. I'm going to
21 play about ten seconds.

22 (At which time, the
23 portion of video identified
24 by counsel was played back.)

25 MR. LORD: I'm stopping at

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 11 seconds for the body camera
3 ending 0034.

4 BY MR. LORD:

5 Q Do you know who these two
6 individuals are in this video?

7 A No.

8 MR. GOSLING: Just so
9 we're clear, you are asking if
10 he knows who the individuals
11 are in the video when the video
12 was stopped at 0 seconds?

13 MR. LORD: Yes. Should
14 say 00. It should say 00:00.

15 BY MR. LORD:

16 Q So, there is an individual
17 in a red hoodie, correct?

18 A Correct.

19 Q And there is an individual
20 who seems like they have a
21 sweater on that has multiple
22 colors.

23 Can you see that?

24 A It's kind of dark, but,
25 okay, yes.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 Q Do you know who these two
3 individuals are now?

4 MR. GOSLING: Just for the
5 record, can we just clarify
6 where you have it paused, both
7 of these individuals have their
8 backs facing the camera?

9 MR. LORD: Yes.

10 MR. GOSLING: Okay. You
11 can answer if you know.

12 A Yes. So, the one with the
13 green hoodie, that was the male
14 that approached us saying that he
15 was the attorney, and the one
16 with the red, I can't figure out
17 because he is turned around, so I
18 don't know exactly who he is.

19 BY MR. LORD:

20 Q I want you to focus on the
21 individual on the right and I
22 want you to give me your
23 observation.

24 MR. LORD: I'm going to go
25 from 00:00 to 00:11.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 (At which time, the
3 portion of video identified
4 by counsel was played back.)

5 MR. LORD: I have stopped
6 it. I'm at 00:12. We stopped
7 at one second over.

8 BY MR. LORD:

9 Q Were you able to observe the
10 individual in the red sweatshirt?

11 A From the back, yes. Only
12 from the back.

13 Q Was he stumbling?

14 A I couldn't tell. There was
15 someone blocking the view.

16 Q So, who is blocking the
17 view?

18 MR. LORD: I will scroll
19 back. I have to press play.
20 One second.

21 (At which time, the
22 portion of video identified
23 by counsel was played back.)

24 BY MR. LORD:

25 Q I'm at 00:02.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 Who is blocking the view?

3 A So, when he walks, the guy
4 in the green sweater blocks him,
5 so you can't really see.

6 Q While he is standing right
7 now, are you able to see him
8 unobstructed?

9 A Now, yes. His back.

10 Q How would you characterize
11 his balance now?

12 A I can't tell. The video is
13 paused.

14 Q So, I'm going to play it.
15 And I'm stopping, again, at
16 00:05. Has your view been
17 obstructed in any way while you
18 are watching the video of the
19 person in the red?

20 A Not at that moment, no.

21 Q So, how is his balance?

22 MR. GOSLING: Objection.

23 You can answer.

24 A I can't tell because the
25 body camera is moving back and

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 forth.

3 Q The body camera is moving
4 back and forth?

5 A Yes, you played it.

6 Q So, I'm going to play from
7 00:00, play from the beginning.
8 Your testimony is the body cam is
9 moving back and forth in such a
10 manner that you are unable to
11 ascertain the individual in the
12 red's balance?

13 A Correct.

14 Q So, according to you, you
15 are unable to determine his
16 balance while he is standing?

17 MR. GOSLING: Again,
18 objection. This is asked and
19 answered. You are asking to
20 make a determination based on
21 body camera.

22 Q So, I'm playing the body
23 video right now.

24 MR. GOSLING: Objection.
25 Go ahead, counsel.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 MR. LORD: I didn't ask
3 the question.

4 Q So, we're going to 00. I'm
5 trying to do this right. So from
6 00:05, 00:06, 00:07. He walks.
7 So I'm directing your attention
8 to the seconds that I just
9 said:05 06, 07, 08. The
10 individual in the red sweatshirt
11 is walking towards the back of
12 the vehicle, correct?

13 A Correct.

14 Q And I'm going to start
15 playing, right. I'm going to
16 start playing at 00:06. Please
17 let know me know when you find
18 that your view of his balance is
19 obstructed. Do you understand
20 what I'm asking?

21 A So, to let you know when the
22 view is obstructed.

23 Q Yes.

24 A Okay. Right there. I can't
25 see him anymore.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 Q So, is it fair to say that
3 in that instance you took
4 approximately two steps before it
5 was obstructed?

6 A I'm not sure. I wasn't
7 counting the steps.

8 Q Let see if we can count the
9 steps. How many steps would you
10 characterize there?

11 A Two.

12 Q In those two steps was he
13 swaying or unbalanced?

14 A I'm not sure.

15 MR. GOSLING: Objection.

16 You can answer.

17 Q You are not sure whether he
18 was swaying?

19 MR. GOSLING: Objection.

20 Counsel, asked and answered
21 numerous times.

22 MR. LORD: All right.

23 MR. GOSLING: Counsel,
24 this is harassment.

25 MR. LORD: That's absurd.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 You can have your opportunity.

3 I'm asking him his video
4 observation from the body cam.

5 MR. GOSLING: He clearly
6 answered numerous times.

7 MR. LORD: I'm now
8 narrowing it down to the two
9 seconds. I'm talking about the
10 two steps that he took. I'm
11 asking in those two steps that
12 he just saw that he said was
13 unobstructed whether or not the
14 individual in the red
15 sweatshirt was swaying.

16 MR. GOSLING: Objection.
17 You can answer.

18 A Can you play the video
19 again.

20 MR. LORD: Let the record
21 reflect that this is going to
22 be at -- I'm starting at 4.

23 MR. GOSLING: Now it's at
24 8.

25 MR. LORD: I stopped.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 MR. GOSLING: If you are
3 going to start at 4, go back to
4 4 seconds and hit play before
5 you ask any questions.

6 MR. LORD: I just did. Do
7 you want me to do it?

8 A It's impossible to tell if
9 he swaying or not because he
10 swings to the right avoiding
11 contact with the green sweater,
12 then he goes to the left to open
13 the door.

14 Q So, you are saying it's
15 impossible to determine whether
16 he is swaying in this clip?

17 A In those two seconds, four
18 seconds of clip.

19 Q So I'm going to a different
20 time frame. So, I'm going to
21 start right here and we're at --
22 this is body cam ending 0034.
23 We're going to be at 01:19. I'm
24 going to let it play. I'm going
25 to stop it. There is audio

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 playing. I'm not going to be
3 asking questions about the audio,
4 so you do not have to worry about
5 that. So I'm going to start
6 playing now. Okay. All right.
7 So I stopped it at 01:31. Were
8 you able to see that individual
9 in the red sweatshirt get out of
10 the vehicle?

11 A Yes.

12 Q Were you able to see him
13 walk?

14 A I couldn't see his feet.

15 Q You couldn't see his feet.
16 Could you see the rest of his
17 body?

18 A Just the torso.

19 Q Let me go. So you could see
20 the upper half of his body, is
21 that correct?

22 MR. GOSLING: Can you
23 specify which section you are
24 going to play and then ask
25 questions based on that.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 MR. LORD: I have to play
3 it first.

4 Q So I'm at 01:25 and I have
5 paused the video ending 0034.
6 What can you see of the
7 individual in the red sweatshirt?

8 A I see just his upper torso
9 and head.

10 Q Are you able to see him walk
11 out of the vehicle?

12 MR. GOSLING: Objection.
13 You can answer.

14 A I didn't see him walk. I
15 just saw him get out of the
16 vehicle.

17 Q How did he get out of the
18 vehicle?

19 A He stood up and closed the
20 door.

21 Q Does he walk after he gets
22 out of the vehicle?

23 A Sure.

24 Can you play the video?

25 MR. LORD: I'm going to go

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 back. I'm going to play.

3 (At which time, the
4 portion of video identified
5 by counsel was played back.)

6 MR. GOSLING: Before you
7 ask the question, can you just
8 set for the record exactly
9 where you are playing from.

10 MR. LORD: I'm trying to
11 get back to the point. I'm
12 going to ask the question.

13 BY MR. LORD:

14 Q So, I'm now at 01:19 and I'm
15 going to play it right now and
16 I'm going to ask you to observe
17 the individual in the red
18 sweatshirt and let me know if you
19 can see him walking towards the
20 individual in the multi-colored
21 sweater.

22 (At which time, the
23 video was played back.)

24 BY MR. LORD:

25 Q So I'm stopping at 01:31.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 Were you able to observe him
3 walk to the individual in the
4 sweater?

5 A Yes, he took about two
6 steps.

7 Q Was he swaying or unbalanced
8 when he took those two steps?

9 A It's hard to tell from the
10 body camera. I would have to be
11 there in person and see it.

12 Q You are saying you can't
13 tell from the body cam?

14 A No.

15 MR. GOSLING: Objection.
16 You can answer.

17 A No.

18 MR. LORD: So, I'm going
19 to stop sharing this.

20 MR. GOSLING: Number 6?

21 MR. LORD: Yes,
22 Plaintiff's Exhibit 6.

23 * * * * *

24 (Body cam video labeled
25 2019-12-15_01-50-16 was

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 marked as Plaintiff's
3 Exhibit 6 for identification
4 as of this date by the Court
5 Reporter; retained by
6 counsel.)

7 * * * * *

8 MR. LORD: This is
9 2019-12-15_01-50-16.

10 MR. GOSLING: Can you
11 repeat that?

12 MR. LORD: 2019-12-15_01-5
13 0-16.

14 Did you get that?

15 MR. GOSLING: Yes. Just
16 to confirm, this will be
17 Plaintiff's Exhibit 6?

18 MR. LORD: Yes,
19 Plaintiff's Exhibit 6.

20 I'm at 00:00. I'm going
21 to play it and I'm going to
22 stop it. I'm not sure exactly
23 where, but I will let you know
24 when I stop.

25 Playing now.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 (At which time, the
3 portion of video identified
4 by counsel was played back.)

5 MR. LORD: So I'm stopping
6 at 00:45.

7 BY MR. LORD:

8 Q What do you see in the video
9 clip that I just showed you?

10 A I saw Garfield.

11 Q And was he being placed
12 under arrest?

13 A I'm not sure what was going
14 on. There was no volume.

15 Q So, let me see if you can
16 hear at this stage. I'm playing
17 from 00:29.

18 Did you hear him say that?

19 MR. GOSLING: I didn't
20 hear anything.

21 MR. LORD: I'm going to
22 play it one more time, so the
23 volume should be coming in.

24 (At which time, the
25 portion of video identified

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 by counsel was played back.)

3 BY MR. LORD:

4 Q Do you hear that statement?

5 MR. GOSLING: We didn't
6 hear anything.

7 A There is nothing. We don't
8 hear anything.

9 MR. LORD: You are not
10 hearing any sound at all?

11 MR. GOSLING: No.

12 Are you, Michelle?

13 COURT REPORTER: No.

14 MR. LORD: You don't hear
15 it now?

16 MR. GOSLING: No.

17 Okay, the sound is not
18 going through.

19 MR. LORD: So, do you see
20 I'm stopping at 01:54. I'm
21 going to go back ten seconds.

22 MR. GOSLING: Counsel, it
23 just, like, kind of jumped a
24 few seconds. It's freezing.

25 MR. LORD: It's freezing?

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 MR. GOSLING: It's
3 jumping.

4 MR. LORD: I'm going to do
5 it again.

6 MR. GOSLING: Maybe just
7 let it load for a second so
8 that it doesn't, like, skip
9 seconds.

10 (At which time, the
11 portion of video identified
12 by counsel was played back.)

13 MR. LORD: Are you seeing
14 this?

15 MR. GOSLING: We can see
16 it, but can you go back to
17 wherever your starting point
18 is.

19 MR. LORD: I'm starting at
20 01:47 is where I started at.

21 BY MR. LORD:

22 Q What do you see in that
23 picture?

24 A Right now?

25 Q What did you see in that

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 video?

3 MR. GOSLING: Objection.

4 You can answer.

5 A I don't know. He got him
6 out the car, the handcuffs went
7 on, and we're walking him
8 somewhere.

9 BY MR. LORD:

10 Q So, the handcuffs going on
11 means that he was under arrest?

12 A Yes.

13 Q And this is approximately,
14 what we're looking at now, 01:59
15 of the body cam video ending
16 50-16, correct?

17 A Correct.

18 Q And I'm looking at the top
19 of the body cam video, it says
20 2019/12/15 01:51, I think this is
21 37 GMT-5. Did I read that
22 correctly?

23 A Yes.

24 Q So that means he was under
25 arrest at approximately 1:50

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 A.M.?

3 MR. GOSLING: Objection.
4 That's not what the document
5 says.

6 MR. LORD: I'm asking him
7 was Mr. Williams under arrest
8 at approximately 1:50 A.M.

9 MR. GOSLING: You can
10 answer.

11 A Yes, it appears that way.

12 MR. LORD: So, we have
13 video starting at 01:27. I'm
14 going to let it play. I'm
15 stopping at 01:56.

16 (At which time, the
17 portion of video identified
18 by counsel was played back.)

19 BY MR. LORD:

20 Q Do you see Mr. Williams
21 walking in that video?

22 A Yes.

23 Q Is he stumbling or swaying?

24 A It's hard to tell through
25 the body camera.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 Q Through the body camera
3 video do you see him stumbling or
4 swaying?

5 MR. GOSLING: Objection.

6 Asked and answered.

7 You can answer.

8 A Like I said, it's hard to
9 tell through a body camera video.

10 BY MR. LORD:

11 Q So, are you saying this does
12 not accurately reflect these
13 conditions?

14 MR. GOSLING: Objection.

15 That's mischaracterization.

16 You can answer.

17 BY MR. LORD:

18 Q What do you mean it's hard
19 to tell?

20 A Because first of all the
21 camera is not even steady,
22 someone is walking behind us with
23 a body camera, so I can't really
24 tell unless it was, like, a
25 steady camera and I see him

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 walking and then I can only see
3 him walking towards someone else.

4 Q So, are you saying that this
5 image may not -- there may be
6 other factors that could affect
7 what you are looking at that it's
8 out of your control? I want to
9 focus on what you see in the
10 video. Based upon strictly the
11 body cam, in your opinion is he
12 swaying?

13 MR. GOSLING: Objection.

14 Asked and answered.

15 You can answer.

16 A I still hard to tell through
17 the body camera.

18 BY MR. LORD:

19 Q So, it's hard to tell means
20 you cannot make a determination?

21 MR. GOSLING: Objection.

22 You can answer.

23 A Yes, I mean the body camera
24 is moving. I won't be able to
25 tell.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 BY MR. LORD:

3 Q Does this body camera video
4 accurately reflect how you
5 remember his condition on that
6 night?

7 MR. GOSLING: Objection.

8 You can answer.

9 A I mean, seeing it in person
10 and through a body camera is
11 different.

12 BY MR. LORD:

13 Q So, your testimony is that
14 he was, in fact, swaying and did
15 not have balance on that night?

16 A Correct.

17 Q And you personally observed
18 that?

19 A Correct.

20 Q And when did you observe
21 this?

22 A When he was leaning on the
23 car, I told him to stand up. He
24 was -- that's when he was, like,
25 a little bit swaying when he

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 swung forward. Then I turned him
3 around, I put the cuffs on him
4 and I was walking towards the car
5 and he seemed unbalanced while
6 walking.

7 Q This is him walking towards
8 the ambulance, correct?

9 MR. GOSLING: Objection.
10 You can answer.

11 A That's what the video shows,
12 yes.

13 BY MR. LORD:

14 Q So, you are saying in this
15 time he was unbalanced?

16 MR. GOSLING: Objection.
17 What do you mean by "this
18 time"?

19 BY MR. LORD:

20 Q You testified earlier
21 that --

22 You said that he was
23 unbalanced when he was walking
24 towards the ambulance, correct?

25 A That's not what I said

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 before. I said while I was
3 cuffing him he swung forward
4 seeming unbalanced and I turned
5 him around, put the cuffs on him,
6 and while I was walking him
7 towards the bus he seemed
8 unbalanced as well.

9 Q When you say that last part,
10 while you were walking him, that
11 is what this body camera showed
12 previously?

13 MR. GOSLING: Objection.
14 You can answer to the
15 extent you know.

16 A I didn't get the full video
17 of him walking.

18 BY MR. LORD:

19 Q I understand that, but it
20 briefly shows what you are
21 describing, not the entire thing?

22 MR. GOSLING: Objection.
23 You can answer.

24 A Correct.
25

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 BY MR. LORD:

3 Q How did you describe him
4 when you asked him to get out of
5 the vehicle? How did you
6 describe that?

7 MR. GOSLING: Objection.

8 You can answer.

9 A Well, here, when the door
10 was opened, he was looking
11 towards us; that's when I saw the
12 bloodshot, watery eyes.

13 MR. GOSLING: You are
14 moving the video a lot from one
15 area to another area to another
16 area, so can you reflect for
17 the record when you ask a
18 question.

19 MR. LORD: I can play the
20 video to get the proper number.

21 MR. GOSLING: I
22 understand, but just so it's
23 clear, can you specify -- I
24 would ask that before you ask
25 questions about the video that

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 you play the section you want
3 to ask him and then ask him
4 questions about it because the
5 back and forth is confusing.

6 MR. LORD: I was asking
7 about 0030 of this body cam
8 footage that's ending 50-16.
9 Let me play it first and then I
10 will ask you questions.

11 (At which time, the
12 portion of video identified
13 by counsel was played back.)

14 MR. GOSLING: Can you
15 specify where you are playing
16 the video from?

17 MR. LORD: I'm at 00:30 so
18 I'm going to start playing now.

19 MR. GOSLING: It's
20 actually at 31.

21 A He was facing us before
22 that, before 00:31.

23 MR. GOSLING: Officer
24 Hernandez, wait for a question.

25 THE WITNESS: All right.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 MR. LORD: So, I'm
3 stopping at 01:00.

4 BY MR. LORD:

5 Q Officer Hernandez, that is a
6 portion of the time frame where
7 you said he was unbalanced?

8 A Correct.

9 Q Does he seem unbalanced in
10 the body cam videos that you saw?

11 MR. GOSLING: Objection.
12 You can answer.

13 A You can see when I turn him
14 around, he kind of sways forward,
15 like this, when I'm putting the
16 cuffs on him and he goes back
17 towards us and leans forward,
18 like this.

19 BY MR. LORD:

20 Q So, your testimony is now
21 the body cam actually reflects
22 his stability?

23 MR. GOSLING: Objection.
24 Mischaracterization.

25 You can answer.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 A That is not what I'm saying.

3 What I'm saying is here in this
4 video you see him swaying forward
5 and back.

6 BY MR. LORD:

7 Q So, your testimony is he is
8 swaying forward and back in this
9 video?

10 A Yes.

11 MR. GOSLING: Objection.
12 You can answer.

13 MR. LORD: I need about
14 five minutes because I have to
15 get this last exhibit.

16 MR. GOSLING: What is the
17 exhibit?

18 MR. LORD: The arrest
19 report. I only have the
20 incomplete arrest report.

21 MR. GOSLING: I
22 understand.

23 So do you want to take a
24 five-minute break?

25 MR. LORD: Yes, five

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 minutes.

3 1:52 P.M., approximately,
4 let's come back.

5 MR. GOSLING: Can we come
6 back at 1:55?

7 MR. LORD: 1:55 is fine.
8 See you then.

9 * * * * *

10 (At which time, a brief
11 recess was held.)

12 * * * * *

13 MR. GOSLING: So we're up
14 to 7, right?

15 MR. LORD: Yes, 7.

16 MR. GOSLING: That's what
17 I have in my notes.

18 MR. LORD: Yes.

19 * * * * *

20 (New York City Police
21 Department Arrest Report
22 B19649648, consisting of 4
23 pages, Bates stamped D_00016
24 to D_00019, was marked as
25 Plaintiff's Exhibit 7 for

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 identification as of this
3 date by the Court Reporter;
4 Attached hereto.)

5 * * * * *

6 MR. LORD: Yes.

7 So, I'm going to share
8 screen.

9 (At which time, counsel
10 screen shared the exhibit
11 with the witness and all
12 parties.)

13 MR. GOSLING: This is the
14 arrest report?

15 MR. LORD: Yes, this is
16 the arrest report.

17 This is Bates number
18 D_00016, all the way to
19 D_00019.

20 BY MR. LORD:

21 Q So, like I said, Bates
22 D_00016 all the way to Bates
23 number D_00019.

24 I'm going to give you an
25 opportunity to review this

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 document, as before.

3 After you had the
4 opportunity to review the section
5 I will scroll down. Please let
6 me know when you want me to
7 scroll down.

8 A (Brief pause in proceedings
9 as witness reviews document.)

10 MR. GOSLING: There it
11 goes.

12 MR. LORD: I'm going to
13 scroll down.

14 (At which time, counsel
15 scrolled through the exhibit
16 for the witness and all
17 parties.)

18 MR. GOSLING: Scroll down.

19 BY MR. LORD:

20 Q Right here. Whenever you
21 are ready.

22 A You can scroll down.

23 Q Starting here.

24 A You can scroll down.

25 MR. GOSLING: That's good.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 THE WITNESS: Okay.

3 BY MR. LORD:

4 Q So, Officer Hernandez, what
5 is this document that we're
6 looking at?

7 A It's an arrest complaint
8 report.

9 Q Who filled out this report?

10 A My partner.

11 Q Is there a reason why your
12 partner filled it out?

13 A I don't recall.
14 The title is on top.

15 MR. GOSLING: It's an
16 arrest report, yes.

17 BY MR. LORD:

18 Q When your partner was
19 preparing this report did he talk
20 to you about what he was going to
21 put into it?

22 A Well, the story goes from
23 the complaint report, so I wrote
24 the story. The thing is that he
25 entered it, so that's why it's

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 saying that.

3 Q So, you are saying that you
4 actually wrote the section with
5 "Details," you wrote that
6 section?

7 A Yes.

8 MR. GOSLING: Objection.
9 You can answer.

10 BY MR. LORD:

11 Q So, you just wrote that
12 section in third person, or he
13 edited it?

14 A No, I wrote it.

15 MR. LORD: I'm reading
16 from the last sentence -- not
17 the last sentence -- the last
18 line of the "Details" section
19 where it starts with "Defendant
20 was", and I'm going to read
21 that.

22 MR. GOSLING: It's not the
23 last line.

24 MR. LORD: The last line
25 ending 16 or the last line not

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 redacted.

3 BY MR. LORD:

4 Q (Reading from Document)
5 So "Defendant was medically
6 cleared with no injuries."

7 Did I read that sentence
8 correctly?

9 A Correct.

10 Q What did you mean "Defendant
11 was cleared with no injuries"?

12 A The doctor filled out the
13 medical treatment form. The
14 medical treatment form stated
15 that he had no injuries.

16 Q And the time of arrest is
17 02:15:00. What time is that?

18 A 02:15.

19 Q Is that 2:15 A.M.?

20 A Correct.

21 Q So, why was this listed as
22 the arrest time?

23 A Because that was the time
24 that we got a chance to put it
25 over the radio.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 Q So, the arrest time is the
3 time that's put over the radio,
4 it's not the time he is actually
5 in cuffs?

6 A It's an approximation of
7 time.

8 Q So, but you are saying that
9 this should be viewed as an
10 approximation, not the exact
11 time?

12 A Correct.

13 MR. LORD: No further
14 questions on that one. I have
15 one final.

16 MR. GOSLING: We're up to
17 8?

18 MR. LORD: We're up to 8.

19 MR. GOSLING: What is 8?

20 MR. LORD: Online
21 prisoner. This is D_00014 to
22 D_00015.

23 * * * * *

24 (Online prisoner
25 arraignment document for

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 Williams, Garfield,
3 #B19649648, Bates stamped
4 D_00014 to D_00015,
5 consisting of 2 pages was
6 marked as Plaintiff's
7 Exhibit 8 for identification
8 as of this date by the Court
9 Reporter; Attached hereto.)

10 * * * * *

11 BY MR. LORD:

12 Q I'm going to give you the
13 opportunity to review this
14 document.

15 A (Brief pause in proceedings
16 as witness reviews document.)

17 Q If I need to scroll down,
18 let me know.

19 A (Brief pause in proceedings
20 as witness reviews document.)

21 Q Do you need me to scroll
22 down?

23 A No, that's good.

24 Q Can you say what this report
25 is?

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 A This is basically what time
3 you prepared and send in the
4 paperwork.

5 Q Does this report have a
6 title?

7 A No, not that I know of.

8 Q Is this report automatically
9 generated or do you input these
10 times?

11 A It's automatically
12 generated.

13 Q Do you have any affect on
14 the information in this report?

15 A No.

16 MR. LORD: I'm stopping
17 share.

18 I have no further
19 questions.

20 MR. GOSLING: I'm going to
21 take five minutes. I don't
22 think I have any questions, but
23 I just want to review my notes.

24 MR. LORD: That's fine.
25 We'll come back at 2:10.

1 Defendant POLICE OFFICER OSCAR HERNANDEZ
2 MR. GOSLING: Sounds good.
3 * * * * *
4 (At which time, a brief
5 recess was held.)
6 * * * * *
7 MR. GOSLING: I just have
8 a couple of questions.
9 EXAMINATION
10 BY MR. GOSLING:
11 Q Good afternoon, Police
12 Officer Hernandez.
13 When you were at the scene
14 of the accident, did Mr. Williams
15 ever tell you that the individual
16 with the green or Christmas
17 sweater was his attorney?
18 A No.
19 Q Did Mr. Williams ever tell
20 you that he was not going to
21 provide you with any pedigree
22 information and that you should
23 confer with his attorney for any
24 answers to any questions or
25 information?

1 Defendant POLICE OFFICER OSCAR HERNANDEZ

2 A No.

3 Q And based on your
4 observations at the accident that
5 occurred on December 15, 2019,
6 did you believe Mr. Williams to
7 be intoxicated?

8 A Yes.

9 MR. GOSLING: I have no
10 further questions.

11 MR. LORD: All right. I
12 think that's it.

13 I am scheduling doing
14 exhibits right now so I can
15 send them over.

16 * * * * *

17 (At which time, 2:16
18 p.m., the examination of
19 POLICE OFFICER OSCAR
20 HERNANDEZ concluded.)
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This is the Deposition of
POLICE OFFICER OSCAR HERNANDEZ
taken in the matter, on the date, and
at the time and place set out on the
title page hereof.

It was requested that the deposition be
taken by the reporter and that same
be reduced to typewritten form.

It was agreed by and between counsel
and the parties that the Deponent
will read and sign the transcript of
said deposition.

REPORTER'S CERTIFICATION

I, MICHELLE TROY PARRISH, a Court Reporter and Notary Public certified in and for the State of New York, do hereby certify that I recorded stenographically the proceedings herein at the time and place noted in the heading hereof, and that the foregoing transcript is true and accurate to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand.

MICHELLE TROY PARRISH

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DEPONENT'S CERTIFICATE

STATE OF _____ :
COUNTY/CITY OF _____ :

Before me, this day, personally
appeared POLICE OFFICER OSCAR HERNANDEZ, who,
being duly sworn, states that the foregoing
transcript of his/her Deposition, taken in the
matter, on the date, and at the time and place
set out on the title page hereof, constitutes
a true and accurate transcript of said
deposition.

POLICE OFFICER OSCAR HERNANDEZ

Signed and subscribed to before me
this ____ day of _____, 20 ____.

NOTARY PUBLIC, STATE OF NEW YORK

DEPONENT'S DECLARATION

DECLARATION UNDER PENALTY OF PERJURY

I, POLICE OFFICER OSCAR
HERNANDEZ, declare, under penalty of perjury,
that I have read the entire transcript of my
Deposition taken in the above-captioned
matter, or the same has been read to me, and
the same is true and accurate, save and except
for changes and/or corrections, if any, as
indicated by me on the ERRATA SHEET hereof,
with the understanding that I offer these
changes as if still under oath. I would like
changes made to my deposition transcript as
indicated on the following page:

Signed on the ____ day of _____, 20__.

POLICE OFFICER OSCAR HERNANDEZ

1 ERRATA SHEET

2 INSTRUCTIONS: After reading the transcript of
3 your testimony, please note any change,
4 addition or deletion on this sheet. DO NOT
5 make any marks or notations on the actual
6 transcript.

7 CASE #: 564508

8 CASE NAME: WILLIAMS v CONY, ET AL.

9 HELD: FRIDAY, FEBRUARY 11, 2022

10 Page Line CORRECTION

11 -----

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23 Signature _____ Date _____

24 POLICE OFFICER OSCAR HERNANDEZ

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Signature _____ Date _____

POLICE OFFICER OSCAR HERNANDEZ

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